the army LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

Department of the Army Pamphlet 27-50-66
June 1978

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Who Is Out Of Step?

Honorable Oliver Gasch, Judge,
United States District Court for the
District of Columbia *

The seventh Kenneth J. Hodson Lecture in Criminal Law delivered at The Judge Advocate General's School on 10 March 1978

Justice Holmes, in his book *The Common Law*, wrote:

> "The life of the law has not been logic: it has been experience."[1]

Not long after the creation of the United States Court of Military Appeals, Chief Judge Quinn expressed a similar view when he wrote:

> Although America prides itself on its Government by laws not men, the laws are of little avail if they are not properly applied at the point of realistic contact with those governed.[2]

In my view, the Court of Military Appeals, in recent years, has not been in step with the drum beat echoing from those two statements. Its activist philosophy combined with its apparent misunderstanding of the needs of our military society have resulted in decisions which are unnecessary and unrealistic in their application to the military service.

It is my hope that in due course the Court of Military Appeals will recognize that it is a functional part of the military community, the sole justification for which is the effective defense

of the United States in accordance with Constitutional principles.

I.

Power

Recent decisions clearly illustrate this path of judicial activism along which the court has followed. In *United States v. Ware*[3] the court cast doubt on the President's power to promulgate much of the Manual for Courts Martial and in *McPail v. United States*,[4] *it* expressed the view that it has the power to supervise the administration and operation of the entire court-martial system. These views fly in the face of articles in the Code specifically addressing these subjects. Article 36 gives the President authority to promulgate rules governing courts-martial procedures and Article 6 gives authority to the Judge Advocates General to supervise the administration of justice.

In *Harms v. United States Military Academy*,[5] the court extended its grasp of authority into a new area. Under the Code the court's jurisdiction is limited to review of decisions within the courts-martial system. Yet, in *Harms* the court reviewed the *administrative* separation of West Point cadets. This is an unmistakable indication that the court intends to review the services' administrative actions as well as its judicial actions.

This repeated usurpation of authority does not give it legitimacy as there is no creation of judicial authority by prescription.[6] Judge Learned Hand once wrote that judges

> wrap up their veto in a protective veil of adjectives such as . . . "reasonable," "inherent," "fundamental" . . . whose office usually, though quite innocently is to disguise what they are doing and impute to it a derivation far more impressive than personal preferences which are all that in fact lie behind the decision.[7]

The Court of Military Appeals, however, is making no such effort to disguise its activist course. Indeed, Chief Judge Fletcher has openly stated that the court will continue to make changes until the services decide to get in step with it, at which point the judges will "lay down [their] mantle of the stimuli and put on the robes of response."[8]

II.

DISTINCTION BETWEEN MILITARY AND CIVILIAN LAW

Justice Powell wrote for the Court in *Schlesinger v. Councilman:*[9]

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Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971. Issues may be cited as *The Army Lawyer*, [date], at [page number].

> The Military is "a specialized society separate from civilian society" with "laws and traditions of its own [developed] during its long history." Moreover, "it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise . . ." To prepare for and perform its vital role, the military must insist upon a respect for duty and a discipline without counterpart in civilian life. The laws and traditions governing that discipline have a long history; but they are founded on unique military exigencies as powerful now as in the past.

However admirable[10] the concept of activism may be in the opinion of some insofar as cases in the civilian courts are concerned, *here* we are concerned with a separate and distinct jurisprudence. It does not follow that the wholesale grafting of the principles of activism into military law is either necessary or desirable.

There is little question in our country about the necessity for a system of military justice distinct from that in the civilian community. That awareness is founded in the Constitution, wherein the Fifth Amendment makes a specific exception for "cases arising in the land or naval forces"; it is reflected in the very origin of the Court of Military Appeals, which, unlike the other courts of our federal system, was born out of Article I of the Constitution and not Article III; and it has been described by the Supreme Court in a long line of cases.

One of the more recent cases illustrates the emphasis the Supreme Court has given to the validity of this distinction. In 1974 the Court in *Parker v. Levy*[11] addressed a habeas corpus challenge to a general court-martial conviction. In upholding that conviction, the Court stated:

> The differences noted by this settled line of authority, first between the military community and the civilian community, and second between military law and civilian law, continue in the present day under the UCMJ. That Code cannot be equated to a civilian criminal code.[12]

There are many reasons that led to the maintenance of a separate system of military justice,[13] and those reasons are as valid today as they were when the republic was founded. These reasons flow from the essential difference in the purposes of the two communities. The object of the civilian community is to enable people to live together in harmony and in reasonable happiness. To achieve this, maximum freedom is given to the individual. The object of the military, however, is to deter wars or, if necessary, to fight and win them.[14] The key factor to achieve this objective is *discipline.*

In the democratic civilian environment there is a liberal margin of error. In the disciplined military environment there is only a very narrow margin, for there is *no* payoff in *placing* or *showing* in war. There is no substitute for victory. Don't forget Nuremberg! As the Supreme Court has said, "[n]o question can be left open as to the right to command in the officer, or the duty of obedience in the soldier."[15] The result of these difference is the creation of a tension and confusion between discipline, viewed as indispensable by the military, and justice equally regarded by the civilians.[16]

Article I, section 8 of the Constitution grants Congress the authority and responsibility to regulate the land and naval forces and, therefore, the authority to regulate this tension and avoid this confusion. When Congress was considering the Uniform Code of Military Justice, it was constantly mindful of the need to achieve a proper balance between these two competing principles. Secretary Forrestal's mandate to the Committee that drafted the Code specifically included as one of its three objectives the development of a system that would protect the rights of those subject to the Code *without impairing the ability of the military to perform its mission.*[17] In his opening remarks to the Congress, he stated that the goal of the Code was the attainment of a balance between "maximum military performance and maximum justice."[18] Professor Edmund M. Morgan, the principal draftsman of the Code, stated in his testimony before Congress that his Committee recognized from the outset that

a system of military justice which was only an instrumentality of the commander was as abhorrent as a system administered entirely by a civilian criminal court was impractical.[19]

III.

THE BALANCE

The essential factor then in determining the final balancing point was the role to be played by the commander in the overall military justice system. The Congress having carefully and thoroughly considered that issue and having defined its resolution, the *balance* is now in danger of being upset by the activism of the Court of Military Appeals, and its misunderstanding of the needs of our military society. Other recent cases demonstrate this.

When the Supreme Court decided *O'Callahan v. Parker,*[20] it held that in order for the military courts to have jurisdiction, there must be a connection between the serviceman's offense and his military service. It further invited the Court of Military Appeals to set rules to effectuate that holding. Accordingly, in *United States v. Beeker,*[21] the Military court announced that the special significance of *drug offenses* to the military was a sufficient service connection to establish *jurisdiction* even if the offense was committed off the military reservation. After *Beeker* the Supreme Court had a second occasion to address the service connection issue in *Relford v. Commandant,*[22] a non-drug case. There the Supreme Court listed twelve factors that had been considered in *O'Callahan* and then applied them to the facts in *Relford,* concluding that a sufficient number were present to justify military jurisdiction over the case.

In *United States v. McCarthy,*[23] the Court of Military Appeals effectively overturned the *Beeker* special significance test. The courts of military review, however, appeared to ignore the *McCarthy* holding. Accordingly, the Court of Military Appeals recently faced again the service connection issue in the context of an off-post drug offense in *United States v. Alef.*[24] Applying the *Relford* criteria, it concluded that there was no service connection and hence no military jurisdiction in such circumstances, even though the civilian authorities had a "hands off" approach to such offenses.

In my view that conclusion is an unnecessarily narrow interpretation of *Relford* and a misunderstanding of the serious threat drug use presents to the effectiveness of our armed forces. Although the court emphasized the absence in *Alef* of any of the factual criteria *Relford* had extracted from *O'Callahan,* it virtually ignored other policy criteria equally stressed by the Supreme Court in *Relford.* Some of these were:

1. The responsibility of a commander for the maintenance of order in his command and his authority to maintain it;
2. The real possibility that civil courts, particularly nonfederal ones, will have less interest in or capacity for cases that vindicate the military's disciplinary authority within its community; and
3. The relationship of the crime to the military.[25]

Clearly, these criteria are directly applicable to off-post drug sales. This conclusion is supported by another Supreme Court opinion, *Schlesinger v. Councilman.*[26] After noting the extent of the military's drug problem and the greater seriousness of such a problem in the military context, the Court stated:

> It is not surprising, in view of the nature and magnitude of the problem, that in *United States v. Beeker,* the Court of Military Appeals found that "use of marihuana and narcotics by military persons on or off a military base has special military significance" in light of the "disastrous effects" of these substances " 'on the health, morale and fitness for duty of persons in the armed forces.' "[27]

This position is also supported by the Fifth Circuit, at least in the context of hard drugs, as evidenced by its decision in *Peterson v. Goodwin,*[28] wherein it found a service connection for an off post, off duty, sale and possession of heroin.

Both as U.S. Attorney and as a U.S. District Judge, I have seen the terrible effects drug use has upon the civilian community. I am appalled at the potential harm a drug problem can impose on the effectiveness of our Armed Forces. By viewing the problem through distinctions of on or off post, on or off duty, and in or out of uniform, the Court of Military Appeals is missing the real issue. It is not the serviceman's particular status at the time he distributed or used the drug, but the potential for harm to the service after he distributed or used it. As Justice Harlan stated cogently in his dissent in *O'Callahan:*

> The soldier who acts the part of Mr. Hyde while on leave is, at best, a precarious Dr. Jekyll when back on duty.[29]

Can the court seriously believe that there is no service connection when a member of a military unit takes a drug off-post, off-duty, and immediately thereafter is called to duty because of an emergency that has arisen in the interim? A civilian drug user is harming himself, and perhaps other individuals if he has to steal to support his habit. A military drug user not only harms himself, but poses a severe threat to the effectiveness of his entire unit. He may have to steal equipment to support his habit. More significantly, the teamwork of the unit, so essential to the accomplishment of its mission, may be impaired or destroyed. The military must be given authority to handle this problem. It cannot do so by being forced to rely on the often questionable enforcement by the civilian authorities. Yet, that is the situation created by the court's decision in *Alef*, a decision that reasonably could have gone the other way.

Another recent decision of the Court of Military Appeals that concerns me is *United States v. Booker,*[30] in which the court interpreted the Supreme Court's decision in *Middendorf v. Henry.*[31] In that case the Supreme Court had held that neither the sixth amendment nor the due process clause of the fifth amendment required that counsel be provided an accused in a summary court-martial proceeding. Yet in *Booker*, the Court of Military Appeals stated that in order to comply with the views expressed in *Henry* it found "it necessary to limit summary courts-martial to disciplinary actions concerned solely with minor military offenses unknown in the civilian society." Again the court has upset the balance between justice and discipline with this unnecessary and unrealistic conclusion.

The appellant in *Booker* had been convicted of assault and battery. These offenses are common in the civilian society. Accordingly, under *Booker*, summary court-martial was held inappropriate. In *Henry*, although the Supreme Court noted that most of the offenses were military in nature, it was aware that one of the servicemen also had been charged with the common law crime of assault.[32] Unlike the Court of Military Appeals, however, it chose to make no distinction with respect to that charge and the unauthorized absence charges. Implicitly then, the Supreme Court approved the use of summary courts-martial for other than minor military offenses. The Supreme Court also emphasized that it possessed "no special competence to evaluate the effect of a particular procedure on morale and discipline and to require its implementation over and above the balance struck by Congress."[33] In reaching this conclusion, it relied on the fact that Congress twice had considered and twice had rejected the suggestion that the summary court-martial procedure be abolished.[34] It thus appears that there was ample leeway in the Supreme Court's *Henry* opinion to have justified a decision contrary to that made by the Court of Military Appeals in *Booker.*

Although the *Booker* decision may not cause severe disruption in a peacetime setting, it could do so in a combat situation. There the need for speedy resolution of disciplinary problems is greatest, yet the availability of lawyers may be severely restricted. Moreover, the commander would want to keep at a minimum the number of other personnel necessary to conduct such a proceeding. The summary court-martial would best meet those needs. Under *Booker*, however, the commander would be severely restricted in the kinds of misconduct that he could handle in this fashion.

These are only some examples of decisions by the Court of Military Appeals that reflect an insensitivity to the balance struck by the Congress in establishing our system of military justice. Time does not allow an in-depth discussion of the rest, but I would like to mention a few in the hope it might encourage the court to take a fresh look at its position with respect to them.

(1) One is the area of commander's responsibility and authority to inspect his unit. This responsibility is necessary to combat the threat of drug abuse within a unit. Yet, unless the bounds of that authority are clear, it is completely ineffective. As one commentator has written, the court's resolution of this issue "has resulted in a crossfire which makes it hazardous for commanders and counsel, let alone commentators, to venture into the area with any confidence."[35]

(2) Another problem is that of speedy trial. In *United States v. Henderson*,[36] the court reversed a conviction of murder and conspiracy to commit murder for a violation of the *Burton* 90-day rule on pretrial processing. Unusual problems were generated by the foreign situs of the case and the violation of the rule was relatively minor. The court's inflexibility resulted neither in the achievement of justice nor the maintenance of discipline. One would venture to hope the court would focus on specific prejudice to the defendant rather than the mere passage of time.

IV.

THE INJECTION OF ACTIVISM

I do not doubt that the court believes it is administering justice and that its decisions are in the interest of the public good. I would remind them, however, of Justice Frankfurter's observation that

> [a]s history amply proves, the judiciary is prone to misconceive the public good by confounding private notions with constitutional requirements, and such misconceptions are not subject to legitimate displacement by the will of the people except at too slow a pace.[37]

Moreover, the administration of justice founded on the predilections of the individual judges is not the administration of "equal justice under the law" but instead the dispensing of personal justice no different in its nature than that administered by enlightened monarchs of old.[38]

Justice Cardozo, in his book, *The Growth of the Law*, wrote:

> The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have a principle of growth.[39]

Perhaps the court believes that through its activism it is providing that growth to our military justice system. Justice Cardozo, however, later in his book, stated:

> Justice is not to be taken by storm. She is to be wooed by slow advances.[40]

Unfortunately, the impact of the court's insensitivity is more in the nature of a series of dramatic mutations rather than gradual, healthy growth.

Judge Cook, in response to criticism from Admiral Miller, the Navy JAG, regarding the court's activist philosophy remarked that activism and judgeship go together in our society.[41] Although they may go together in the civilian sector, that relationship is less appropriate within the military system of justice. A large portion of our civilian justice system is founded on the common law, itself created by the judiciary. Activism may thus be necessary to keep it current. When the system of justice is founded upon a relatively stable statutory code, the setting in which the Court of Military Appeals must function, activism must be restricted.

Moreover, when civilian courts have donned their robes of judicial activism, they generally have done so in response to governmental encroachment on individual rights. As a result, the courts have performed their role within the system of checks and balances contemplated for them by the Constitution. The history of individual rights within the military, however, has

not reflected the imposition of greater restrictions on these rights, but rather an expansion of them. Thus, activism by the Court of Military Appeals does not check any governmental encroachment, but instead upsets the balance achieved by Congress in granting the expanded rights.

Chief Judge Fletcher has stated:

> the court has only one standard to look toward for change and that is the civilian system . . . .[42]

But, the court is not called upon to look actively for change at the risk of impairing the efficiency and effectiveness of our armed forces. Its mission is to maintain the balance established by Congress and not to destroy it. When it was created, the court was to serve two principal functions: insure uniformity of decisions emanating from the various services and serve as a check to command influence in the justice system. Activism by the court is only appropriate to accomplish those two roles. It is not an end unto itself. The title of the court's enabling Act is the Uniform Code of Military Justice not the Uniform Code to Achieve Civilian Justice for the Military.

Apparently the creation of the all volunteer force has had a considerable impact on the direction the Court of Military Appeals has taken. In Judge Fletcher's view, men and women seek employment in the armed services just as they would in a filling station. He believes they are therefore a more exact mirror image of the civilian community and that they thus expect to encounter a greater reflection of the rights they *had* in the civilian community.[43]

My reaction to this is that Judge Fletcher apparently is unaware of the history of the reform movement in military justice. In 1948 one of the strongest arguments on behalf of the proposed legislation was that contemporaneously Congress was reinstating the draft. It was a theme frequently advanced thereafter during the Cold War period.[44] Clearly a military force filled by the random selection process is a more accurate image of the civilian community than one that is filled by volunteers who have *willingly* left behind their civilian status. Moreover, there is a greater need to protect one who has no choice than one who volunteers *knowing there will be substantial limitations* on the rights he had enjoyed as a civilian. Thus, contrary to Judge Fletcher's reasoning, the existence of the all volunteer force provides no rational basis for injecting civilian standards into the well defined separate system of military justice.

V.

HAS THE MILITARY DEFAULTED?

Another factor that apparently has motivated the Court of Military Appeals to proceed along this activist route is the belief that the military community has defaulted in its responsibilities to effectuate change.[45] Again, a review of the history of reform in military justice indicates that you in the military establishment have been an equal partner in this process.

Substantial revisions were enacted by Congress following WW I and WW II at the suggestion and with the approval of the military. The 1950's also saw reform from the services. The Navy instituted branch review boards and dockside courts to assist small ships lacking personnel trained in conducting courts-martial. It also quickened the trial process, resulting in a 42% decrease in the number of sailors confined before trial. The Air Force instituted a policy of providing trained lawyers as defense counsel at special courts-martial even though the law did not require it. The Army began approving negotiated plea agreements and more importantly it instituted an independent judiciary.[46] In a 1966 statement to a Senate Subcommittee, Judge Ferguson called the Army's new judiciary plan "one of the most significant developments of the last 10 years in military justice."[47]

It is also noteworthy that the military's efforts at rehabilitating its members who become involved in the criminal justice system are in many instances more enlightened than those used in our civilian society.[48]

The military obviously has a self-interest in looking for and correcting defects in its justice system. If its servicemen and women view that system as unjust, morale, and with it, effectiveness, will be impaired. The military's reluctance to accept all the changes that the Court of Military Appeals thrusts upon it should be viewed by the court not as a default by the military in its responsibilities to effectuate change, but instead as a signal from the military that in discharging its responsibilities to maintain a balance between the justice and military exigencies of the system, the particular change in *its* view is unwise and unwarranted.

The function of the Court of Military Appeals is to maintain balance, not to upset it. Congress has expressly provided in the Code a means for effectuating changes in the balance it struck. It requires the court and the Judge Advocates General to meet annually to review the operation of the Code and to make such recommendations regarding change as are desirable.[49] It is the Constitutional responsibility of Congress to legislate and to decide what, if any, changes should occur. If the court chooses instead to continue along its present course of judicial activism and the *civilian*ization of the military justice system, the result may well be the erosion of public confidence essential to it and the impairment of discipline and effectiveness essential to the military, and ultimately to the life of this nation.[50]

To borrow, and update a bit, a quotation from General William Tecumseh Sherman, himself a lawyer before his Civil War service:

> It will be a grave error if by negligence we permit military law to become emasculated by allowing [judges] to inject into it the principles derived from their practice in the civil courts, which belong to a totally different system of jurisprudence.[51]

The military marches to a different drum beat than that found in the civilian sector. Its cadence is constant, predictable, and functional, enabling its members to join together to accomplish their mission. Among the civilian populace, the beat is a collage of syncopated rhythms, permitting its members to pick the best suited their individual life styles.

Not too long ago the court appeared to understand the importance of this difference. In *United States v. Priest*,[52] which affirmed a court-martial conviction for printing and distributing a publication with intent to promote disloyalty and disaffection among members of the armed forces, Chief Judge Darden wrote for a unanimous court:

> The armed forces depend on a command structure that at times must commit men to combat, not only hazarding their lives but ultimately involving the security of the Nation itself.
>
> * * * * *
>
> . . . The hazardous aspect of license in this area is that the damage done may not be recognized until the battle is begun. At that point, it may be uncorrectable or irreversible.[53]

Lately, however, the court has turned its ear away from the marching beat of the military toward the various rhythms favored by the civilian populace. Consequently, they have lost the cadence and have gotten out of step. It is my hope that they will regain it.

Thank you.

Notes

* Judge Gasch is a native of Washington, D.C. He is a graduate of Princeton University and George Washington University Law School. He was admitted to the District of Columbia bar in 1931. He engaged in the private practice of law in Washington until 1937 when he was appointed Assistant Corporation Counsel for the District of Columbia.

In 1942, Judge Gasch entered the military service and subsequently served in Washington, D.C., Florida, Australia, New Guinea, Leyte and Manila in the Philippines.

Following his separation from the service in 1945, he returned to the Corporation Counsel's office as Chief Trial Counsel. He was appointed First Assistant United States Attorney in 1953 and became United States Attorney in 1956. He served in that position until 1961 when he returned to the private practice of law as a member of the firm of Craighill, Aiello, Gasch and Craighill. He was

nominated and confirmed in 1965, as Judge, United States District Court for the District of Columbia.

Judge Gasch is past president of the Bar Association of the District of Columbia and The Barristers; Fellow of the American Bar Foundation; and former Chancellor of the Episcopal Diocese of Washington, D.C.

1. O. HOLMES, THE COMMON LAW 1 (M. Howe ed. 1963).

2. *Foreword to Symposium on Military Justice*, 6 VAND. L. REV. 161, 162 (1953).

3. United States v. Ware, 1 M.J. 282 (C.M.A. 1976).

4. McPhail v. United States, 1 M.J. 457 (C.M.A. 1976).

5. Misc. Docket No. 76-58 (C.M.A., July 30, 1976).

6. R. BERGER, GOVERNMENT BY JUDICIARY 352 (1977).

7. *Id.* at 279 (quoting Judge Learned Hand).

8. Address by Chief Judge Albert Fletcher, Jr., United States Court of Military Appeals, Federal Bar Association Convention, San Juan, Puerto Rico (Sept. 29, 1977).

9. 420 U.S. 738, 757 (1974) (citations omitted).

10. *See* Johnson, *The Role of the Judiciary With Respect to the Other Branches of Government*, 11 GA. L. REV. 455 (1977).

11. 417 U.S. 733 (1974).

12. *Id.* at 749.

13. *See, e.g.*, Greer v. Spock, 424 U.S. 828, 837, 843-44 (1976); O'Callahan v. Parker, 395 U.S. 258, 281-83 (1969) (Harlan, J., dissenting); Hodson, *Military Justice: Abolish or Change?*, 22 KAN. L. REV. 31 (1973); Ward, *UCMJ-Does it Work?*, 6 VAND. L. REV. 186, 191 (1953).

14. W. GENEROUS, SWORDS & SHIELDS 47-48 (1973) (quoting Frederick B. Wiener).

15. *In re* Grimley, 137 U.S. 147, 153 (1890).

16. W. GENEROUS, *supra* note 14, at 2.

17. *Id.* at 34.

18. *Id.* at 46.

19. Statement of Professor Edmund M. Morgan, Jr. before Subcommittee No. 1 of the House Committee on the Armed Services (Mar. 7, 1949).

20. 395 U.S. 258 (1969).

21. United States v. Beeker, 18 C.M.A. 563, 40 C.M.R. 275 (1969).

22. 401 U.S. 355 (1971).

23. United States v. McCarthy, 2 M.J. 26 (C.M.A. 1976).

24. United States v. Alef, 3 M.J. 414 (C.M.A. 1977).

25. 401 U.S. at 367-69.

26. 420 U.S. 738 (1975).

27. *Id.* at 761-62 n. 34.

28. 512 F. 2d 479 (5th Cir. 1975), *cert. denied*, 423 U.S. 931 (1976).

29. 395 U.S. at 281.

30. United States v. Booker, 3 M.J. 443 (C.M.A. 1977).

31. 425 U.S. 25 (1976).

32. *Id.* at 28, 39.

33. *Id.* at 44.

34. *Id.* at 44 & n. 21.

35. Cooke, *The United States Court of Military Appeals, 1975-1977: Judicializing the Military Justice System*, 76 MIL. L. REV. 43, 156 (1977).

36. United States v. Henderson, 1 M.J. 421 (C.M.A. 1976).

37. AF of L v. American Sash Co., 335 U.S. 538, 556 (1949) (Frankfurter, J., concurring).

38. R. BERGER, *supra* note 6, at 289 n. 24.

39. B. CARDOZO, THE GROWTH OF THE LAW 20 (1924), *quoted in* Cooke, *supra* note 35, at 161.

40. B. CARDOZO, *supra* note 39, at 133, *quoted in* Cooke, *supra* note 35, at 122.

41. Remarks of Judge William Cook, United States Court of Military Appeals, Judge Advocates Association Annual Conference, Chicago, Illinois (Aug. 9, 1977).

42. Philpot, *CMA Rulings 'Harmful to Military?'*, ARMY TIMES, Nov. 28, 1977, at 30, col. 1.

43. *Id.*

44. W. GENEROUS, *supra* note 14, at 29.

45. Address by Chief Judge Albert Fletcher, Jr., *supra* note 8.

46. W. GENEROUS, *supra* note 14, at 113-17.

47. *Id.* at 117.

48. *Id.* at 119-20.

49. Article 167(g), 10 U.S.C. §867(g) (1970).

50. *Cf.* United States v. Richardson, 418 U.S. 166, 188 (1974) (Powell, J., concurring).

51. W. GENEROUS, *supra* note 14, at 48.

52. United States v. Priest, 21 C.M.A. 564, 45 C.M.R. 338 (1972).

53. *Id.* at 570, 571.

U.S. Army Trial Defense Service Begins One Year Test

On 15 May 1978, the Army will begin a one-year test of the U.S. Army Trial Defense Service (USATDS) at 16 installations within the U.S. Army Training and Doctrine Command (TRADOC). USATDS will be organized as an activity of the U.S. Army Legal Services Agency (USALSA), a field operating agency of The Judge Advocate General, located at Falls Church, Virginia.

Forty-one JAGC officers and three regional defense counsel have been selected by The Judge Advocate General to participate in the test program as defense counsel in the field. A number of criteria were employed during the selection process, including trial experience, retainability, length of active duty, formal certification as a defense counsel, and overall record. All officers will be assigned to USALSA, with duty station at a particular TRADOC installation. Officer evaluation reports will be accomplished entirely within the defense chain of supervision.

Defense counsel will perform duties under the general direction of the Chief, USATDS, and three Regional Defense Counsel, located at Forts Dix, Benning, and Knox. A Senior Defense Counsel has been designated at each installation who will be directly responsible for all USATDS operations at that post.

Brigadier General Alton H. Harvey, Assistant Judge Advocate General for Civil Law, will provide overall supervision and direction for USATDS operations. The Judge Advocate General has designated Colonel Robert B. Clarke, JAGC, as Chief, USATDS. During the test period, he will be assisted by three other officers assigned to the USATDS Staff. Colonel Daniel A. Lennon, Jr., the TRADOC Staff Judge Advocate, has been responsible for initial planning within TRADOC. He and his office will continue to act as the TRADOC primary point of contact and coordination for the test.

Defense services to be provided by USATDS field offices will include representation at all courts-martial, Article 32 investigations, custodial and other pretrial consultations, Article 15 actions, and representation in connection with certain administrative boards. When USATDS counsel are not fully engaged in their primary mission, they will perform other legal duties which do not conflict with their basic defense counsel mission.

As the program progresses, it will be evaluated by commanders, staff judge advocates, USATDS personnel, and others charged with the administration of military justice. At the conclusion of the test, a final report will be submitted to the Chief of Staff.

TJAG's Comments on the USATDS

This is the text of a letter which Major General Wilton B. Persons, Jr., The Judge Advocate General, sent to all Staff Judge Advocates involved in the TRADOC test of the U.S. Army Trial Defense Service.

As we approach 15 May 1978 and the test of the U.S. Army Trial Defense Service (USATDS) in TRADOC, I thought it would be helpful to set forth some of my personal views on the program and the special importance I attach to it.

Establishing a separate defense structure is, of course, an evolutionary concept and must be viewed in that light. After talking to a good many staff judge advocates and commanders, I am convinced that most favor a change in our current method of providing defense services. Objections and concerns relate largely to methods of implementation, supervisory arrangements, matters of support, and relationships between those charged with the responsibility for administering military justice. The test will afford us an excellent opportunity to examine these aspects in detail, determine where our real problems lie, and try alternative methods of operation.

By this time, I am sure you are aware of the basic organizational structure we will be using for the test. I have designated Colonel Bob Clarke as Chief, USATDS. He will report directly to Brigadier General Harvey, who will provide general supervision, much the way he does for the Defense Appellate Division. Senior and Trial Defense Counsel, who will be assigned to USALSA, have been designated at each installation, and the Regional Counsel are already in place. In this regard, one of the principal purposes of the test will be to exercise USATDS organizational channels, but I do not want the USATDS structure, in and of itself, to act as a constraint on a free-flow of information to and from SJAs. For this reason, I urge you to communicate directly with your Senior and Regional Defense Counsel and with the USATDS staff.

While USATDS officer personnel will have a separate rating and supervisory chain, they will remain members of your military community. I encourage you to include them in your office social functions and other command sponsored activities. USATDS counsel will be required to comply with local directives and policies such as those relating to administration, physical fitness, duty hours, standards of appearance, and the performance of certain extra duties performed by your own judge advocates. Exceptions to these policies—when the duty is clearly inappropriate for a defense counsel or where workload requirements preclude compliance—should be rare. Prior to 15 May, you will be furnished a copy of the basic USATDS SOP which sets forth policies and procedures in detail.

Administrative and logistical support arrangements for USATDS offices deserve your special attention. Comments from SJAs highlight this as a potential problem area. USATDS offices will, as you know, be satellited on installations similar to the way our trial judges are currently supported. In the case of your installation, you will have the additional requirement of supporting a Regional Defense Counsel. We intentionally avoided prescribing support requirements in detail, as these will vary by installation. Some give-and-take between SJAs and Senior Defense Counsel will be necessary in working out these arrangements. I am confident that, through cooperation and full and frank discussion, appropriate support arrangements will be developed at the local level. When agreement cannot be achieved, both the TRADOC and USATDS supervisory personnel will assist in resolution.

During the test, we will be emphasizing the collection and reporting of detailed workload and personnel data, most of which will be a USATDS task. However, as the test progresses, there will be requirements for interim and final after-action reports from both SJAs and commanders. We are developing specific guidance and formats for these and will provide you with instructions at a later date. At the JAG conference in October, I hope to meet with all of the TRADOC SJAs for a preliminary exchange of experiences.

I also encourage you to continue to educate your commanders at all levels on the background of the program and the purposes of the test. USATDS will assist in this effort, but the special relationships and rapport you enjoy with your commanders will make your contribution especially meaningful. Finally, I appreciate the additional responsibility the test will place on you and your office during the coming year. I am certain that with your support the test program will work smoothly. As always, your views and comments will be welcome.

Professional Responsibility

Criminal Law Division, OTJAG

The OTJAG Professional Responsibility Advisory Committee recently considered questions pertaining to the ethical duty of counsel involved in court-martial cases to reveal to the

court defects in jurisdiction over either the person of the accused or the alleged offense.

The questions presented to the Committee and its answers were as follows:

1. Must defense counsel raise jurisdictional motions in all cases when they know (or believe) military jurisdiction over the accused is lacking? Answer: No.

2. After foregoing a jurisdictional motion at trial, may a defense counsel properly raise the matter in documents submitted after trial, for example, post-trial review rebuttal, Article 38(c) brief, letters to the appellate defense counsel? Answer: Yes.

3. May appellate defense counsel raise a jurisdictional defect on appellate review when it has been waived by counsel at trial at the urging of his or her client? Answer: Yes.

4. Does the waiving of a jurisdictional motion at trial, at the urging of the client, constitute inadequate or ineffective assistance of counsel? Answer: Not necessarily. The Committee determined that the answer to this question depends upon whether failing to raise such an issue is otherwise in the interest of the client.

5. Does the defense counsel have an affirmative duty to notify the court of a possible jurisdictional defect over the accused? Answer: Not under present court procedure.

6. If the defense counsel does have such a duty, how much information must she or he disclose as to the jurisdictional defect, and what is his or her responsibility after putting the court on notice of its possible lack of jurisdiction over the accused? See answer to question 5.

7. If the trial counsel is aware of a possible jurisdictional problem, does she or he have an affirmative duty to notify the defense counsel or the court? Answer: Yes.

The pertinent provisions of the ABA Code of Professional Responsibility considered by the Committee included the following Disciplinary Rules (DR) as summarized:

(1) DR 7–101 (B) (1): A lawyer may, with consent of client, waive or fail to assert a right or position of a client where otherwise permissible.

(2) DR 7–102 (A) (3): A lawyer shall not fail to disclose what is required by law.

(3) DR 7–102 (A) (4): A lawyer shall not use perjured testimony or false evidence.

(4) DR 7–102 (A) (6): A lawyer shall not preserve false evidence.

(5) DR 7–102 (B) (1): A lawyer shall reveal fraud perpetrated by his or her client during the course of his or her representation if the client refuses to rectify same, except when the information is protected as privileged.

(6) DR 1–102 (A) (4) and (5): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation; she or he shall not engage in conduct prejudicial to the administration of justice.

(7) DR 4–101 (B) (1): A lawyer shall not knowingly reveal confidences or secrets of his or her client.

(8) DR 4–101 (C) (2): A lawyer may reveal confidences or secrets of his or her client when permitted by DR's or required by law or court order.

(9) DR 7–103 (B): A public prosecutor shall make timely disclosure to counsel for the defendant of the existence of evidence, known to the prosecutor, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

The Committee determined that the propriety of a decision of a lawyer under the provisions of DR 7–101 (B) (1) to waive or fail to assert a right or position depends upon a requirement to reveal based in law and other DR's. It stated that it was unaware of any legal requirement for a defense counsel to reveal jurisdictional defects. The Committee cited Ethics Case 76–7, dated 22 October 1976, in which it concluded that a defense counsel does not have a "legal obligation" to confirm the accuracy of information presented by the gov-

ernment to the court, but condemned affirmative confirmation of inaccurate information. Except in unusual circumstances, an attorney is bound to protect confidences and secrets of his or her client (DR 4-101). Often a confidential communication will be the origin of notice to defense counsel of a possible jurisdictional defect.

The Committee observed that the doctrine of waiver as it applies to jursidictional matters and military law is the problem. The Committee stated that it was operating under an assumption that the law in this area is well settled, *i.e.*, jurisdiction is never waived, and noted that the issue of lack of jurisdiction may be raised for the first time at the appellate level before a tribunal ill-equipped, based on the record before it, to decide the issue.

The Committee stated that, although the questions presented to it did not always suggest them, it perceived somewhat different practical problems. The defense counsel's decision rarely will be whether to defend on the basis of jurisdictional defect when the uncontroverted facts show a clear victory for the defendant on that issue, such as an accused's assertion that his or her age is 16 corroborated by unassailable documentary evidence. The Committee then contrasted situations such as recruiter fraud, recruiter connivance cases, or the myriad factual backdrops possible in the *O'Callahan* and *Relford* area, where success in a jurisdictional attack is less predictable. The Committee determined that counsel's duty, as defined by Ethical Consideration (EC) 7-8, requires him or her to explore possible defenses with his or her client. However, the decision whether to assert a possible defense is a tactical one which will depend on an assessment of its results and the ultimate effect on the defendant. The tactical decision not to raise a jurisdictional issue must be considered in light of a decision not to litigate any possible defense. The decision not to raise self-defense, intoxication, alibi or other issues at the trial is made after an analysis of the possibility of success. The Committee stated that counsel must also consider that success on a possible jurisdictional issue could lead to a civilian trial or administrative elimination from the service. The Committee concluded that it was difficult to perceive any reason to question the attorney's ethics in such cases, and that an ethical rule which would require the defense attorney to ignore the state of the law to his or her client's detriment would eventually destroy public confidence in defense attorneys and create an ethical doctrine of waiver.

The Committee stated:

> The military law regarding jurisdiction is unique. This doctrine, our current court procedure, and our two tiered defense system combine to form at best an uncomfortable situation. That discomfort is detected in questions such as those which prompt this opinion. Similar questions are raised at the various seminars attended by our judges and trial attorneys. They are raised probably because of the ancillary considerations which are part of the decision equation. We know the defendant might prefer not to serve a sentence in a German, Korean or Turkish prison. We also know that he would probably prefer in some cases not to chance the results of a trial in a U.S. community where he may be a transient.

Noting that defense counsel cannot confirm false evidence, cannot knowingly provide false evidence, lie, or knowingly use evidence known to be false, the Committee concluded that silence on jurisdictional matters does not constitute presentation of false evidence or perpetrate a fraud on the court.

As to appellate defense counsel, the Committee stated that he or she has carte blanche authority to expose the trial defense counsel's tactic and ignore the benefits accrued by its attempted waiver. Appellate counsel may simply assert jurisdiction as a new matter on appeal with information supplied by the defendant, now his or her client. Alternatively, he or she may assert as error the inadequacy of the counsel below. The tactic on appeal does not matter, as there is no doctrine of agency which would bind the second tier attorney to the tactics employed by the trial defender even when they were, at the time of the trial, in the defendant's

interest and to his or her great benefit. The Committee concluded that it is as ethically appropriate for appellate defense counsel to raise jurisdictional defects on appeal, as it is for the trial defense attorney and his or her client to forsake them at trial. Defense attorneys of both tiers in either failing to raise a jurisdictional issue at trial or failing to raise it for the first time on appeal are performing as attorneys are expected to perform when they understand the law.

The Committee determined that DR 7–103 (B) would require the military prosecutor to disclose known jurisdictional issues to the convening authority and to the court as well as to the defense counsel.

The Committee also discussed whether trial court procedure could be broadened to expose jurisdictional issues where they could be more properly dealt with than at the appellate level. It noted *United States v. Alef*, 3 M.J. 414 (C.M.A 1977), where the United States Court of Military Appeals held that each specification must not only allege an offense under the U.C.M.J., but also must set out facts which predicate military jurisdiction over the accused and the offense. The Committee stated that perhaps, in view of *Alef*, military court procedure could be altered to require judges to inquire of counsel for both sides and the accused whether there is any matter known to them which would cast doubt upon the trial court's jurisdiction over the accused or the offense.

American Bar Association Formal Opinion on Military Legal Assistance

Formal Opinion 343 and the article Ethical Issues in Military Legal Assistance which follows the formal opinion are both reprinted from Volume 64 of the American Bar Association Journal *(March 1978).*

Professional Ethics
Formal Opinion 343
(December 23, 1977)

The conduct of a military legal assistance officer is governed by the Code of Professional Responsibility to the same extent as that of other lawyers. Various specific questions relating to such conduct are addressed.

CANONS, DISCIPLINARY RULES, and ETHICAL CONSIDERATIONS CITED: Canon 1, Canon 2, Canon 4, Canon 9. Disciplinary Rules 1-103(A); 2-109; 2-110; 2-110 (A) (1)(2); 4-101; 4-101 (C); 9-101(A)(B). Ethical Considerations 2-26 through 2-33.

The Standing Committee on Legal Assistance for Military Personnel of the Association has propounded a comprehensive group of questions to the Committee on Ethics and Professional Responsibility. The responses are requested to provide guidance to legal assistance officers who render noncompensated services to military personnel. Except where a question of law is presented as noted, the committee has undertaken herein to respond to the inquiries. For reasons of clarity or of style, minor modifications have been made in the questions without changing their sense.

1. To whom should a legal assistance attorney report unethical practices or misconduct of another legal assistance attorney—the local bar association(s) in the jurisdiction(s) where the individual is admitted to practice?

A military lawyer may discharge the responsibility imposed upon him by D.R. 1-103(A) by sending a report to any tribunal or other authority empowered to act upon the violation. Ordinarily, this will include the staff judge advocate of the attorney in question.

2. May a legal assistance officer use professional name cards?

The Code of Professional Responsibility contains no prohibition against such use.

3. Where it is not possible to provide unlimited legal assistance, what criteria may be used in selection of legal assistance clients: income, ability to pay, rank or rate, complexity of legal matters?

There is no prohibition against establishment of broad policies relating to which categories of

cases will be handled. Formal Opinions 324 and 334.

4. May legal assistance cases be taken on a "limited handling" basis, such as no court appearances or no appeals or no class actions?

If the client is fully informed at the outset, such limited services may be provided in keeping with policies established by the appropriate authority. Formal Opinion 334.

5. Under what circumstances, if any, may a military legal assistance officer refuse to enter into an attorney-client relationship with a qualified prospective client? Matter morally repulsive to attorney? One which would be detrimental to armed service? Or one which involves a business venture of military member? Does it matter whether other military or civilian counsel is available? If he does not have an absolute right to refuse a client, to whom, if anyone, must the legal assistance officer explain his reasons for any such refusal?

The military legal assistance officer is governed by the same considerations as other lawyers, which are generally set forth in E.C. 2-26 through E.C. 2-33, and D.R. 2-109. Legal assistance officers are, in addition, subject to regulations of the service, and these regulations should be consulted.

6. Once an attorney-client relationship has been established, under what circumstances, if any, may it be terminated by the legal assistance officer?

See D.R. 2-110 for the comprehensive recitation of these circumstances.

7. If a client's problem persists past the authorized limits of military legal assistance program, must or may the legal assistance officer assist the client in obtaining civilian counsel? If so, what are the parameters? If there is a lawyer reference service, must it be consulted? Can the military attorney guide his client toward civilian practitioners he feels will do the best job, the least expensive job, the friendliest job?

There is no ethical requirement that the attorney affirmatively locate another attorney for the client. If he does so, he should give such objective recommendations as is reasonably possible, citing such factual information as he may have. The regulations of the service should be consulted.

8. If the legal assistance officer has good reason to believe that certain civilian counsel are dilatory, too expensive or unqualified, may he recommend that his clients not utilize such counsel?

If he has clear reasons for so doing, there is no objection to such recommendation.

9. If a lawyer referral service is not used or available, what is the minimum number of lawyers' names which should be given to a client for referral purposes?

The committee would not suggest any specific number because too many variables are involved. Care should be taken to avoid appearance of impropriety in consistent referrals to an unreasonably small number of attorneys.

10. May a state or local bar association prevent a legal assistance officer who is admitted in that jurisdiction from representing a military client in the courts of that jurisdiction?

This is a question of law beyond our jurisdiction.

11. In a state where there is not an expanded legal assistance program permitting out-of-state attorneys to practice, what papers, motions, pleadings and forms may be completed by the legal assistance officer for the client without "wrongfully practicing" law within the jurisdiction? For example, may a legal assistance officer prepare the petition for a dissolution of marriage for a client in a state which does not have an expanded program and in which he is not personally licensed to practice? Is it relevant that pro se representation is common in that jurisdiction?

This is a question of law beyond our jurisdiction.

12. Under what circumstances, if any, may a nonlawyer military officer act as a legal assist-

ance officer or act in the rendering of legal assistance to military personnel?

This is a question of law beyond our jurisdiction.

13. In light of the attorney-client privilege, is it wrong to answer inquiries from the client's commander regarding the nature and/or the seriousness of a client's problems? For example, after an individual has been referred to the legal assistance officer by a commander, is it wrong to respond to a subsequent inquiry by the commander as to whether the client is in serious financial difficulty?

These matters at the least involve a secret which cannot be disclosed absent permission of the client, D.R. 4-101, and, depending upon applicable law, are likely to be communications protected by the attorney-client privilege.

14. At what point in the legal assistance process does the attorney-client relationship begin? If an individual seeks legal advice through the legal assistance program, and, in the course of his conversation reveals criminal confidences not contemplated by program regulations, is such information disclosable to military or civilian law enforcement officers? Can the individual raise the attorney-client privilege, even though outside the legal assistance regulation, by arguing that he relied on the status of the judge advocate or law specialist as a lawyer, his request for legal assistance and the lawyer's failure to stop the conversation until after prejudicial disclosures were made?

The first question is a fact question beyond our jurisdiction; the second refers to communications about past criminal actions which are a recognized secret or confidence not disclosable without consent, D.R. 4-101; and the third is a question of law which is beyond our jurisdiction.

15. May confidential information obtained in the attorney-client legal assistance relationship ever be utilized by the attorney in late administrative or criminal actions without the permission of the client?

No, absent application of one of the exceptions in D.R. 4-101(C).

16. Are legal assistance files the property of the legal assistance officer?

This is a question of law and may also be subject to regulations of the service.

17. May a legal assistance officer represent a service member in an action (paternity, divorce, landlord-tenant, etc.) against another service member? Does it matter whether both or only one of those members is eligible for military legal assistance? Is a first-come, first-served system of representation appropriate?

A single office should be wary of representing both sides of a controversy; compare Informal Opinions 1233 and 1309. See also Informal Opinion 1235, expressing a caveat as to military prosecutors and defense counsel sharing offices. There is no prohibition, however, against representing one military person against another.

18. What is the propriety of representing a dependent wife against a husband service member in a divorce or a support action? What is the propriety of representing both a serviceman and his wife using different judge advocates or law specialists from the same office? Different offices? Different military services? Does it matter whether other military or civilian counsel are available?

See the answer to 17 above. Joint representation by the same office should be avoided. Different offices or services ordinarily should not present this problem. The earlier cited informal opinions demonstrate that no absolute rules can be set forth, and each situation must be examined on the facts as there discussed.

19. What is the propriety of representing a service member or his wife in a straight bankruptcy or in a Chapter XIII Wage Earner Plan which may require long-term monitoring and in which attorneys' fees are provided for during the course of the proceedings?

No ethical question appears to be involved.

20. Does the legal assistance officer have the authority to provide advice to a service member whose military pay appears to be subject to garnishment, particularly in those situations where the service may have a real interest in the matter or where a possible defense to the action exists? (May the legal assistance officer initiate a garnishment action on behalf of his client against the military pay of another military member?)

There seems to be no ethical question involved here.

21. What procedures should be followed when the legal assistance officer is transferred or discharged while in the midst of a legal assistance case (such transfer or discharge ordinarily being beyond the control of the individual legal assistance officer)?

The same precautions should be taken as are taken in civilian life when an attorney in a partnership or his client dies, i.e., notice to the client and maintenance of systems designed to prevent harm to the client. See D.R. 2-110(A)(1)(2).

22. After a military member has received legal assistance, may the legal assistance officer enter later in an adversary capacity against the member in a court-martial or administrative discharge proceeding?

If the matter is not related to the previous representation and there are no relevant client confidences or secrets involved, there is no prohibition. See D.R. 9-101 (A) (B) and D.R. 4-101.

23. To what extent may an attorney or nonattorney commanding officer control the individual cases or types of cases which a legal assistance officer undertakes?

As indicated in answers 3 and 4, classes of cases may be ordered refused or given limited handling. However, a commanding officer should not seek to control the undertaking of individual cases. Formal Opinions 321 and 334.

24. If a legal assistance officer commits a breach of legal ethics by complying with the order of his lawyer or nonlawyer commanding officer, may he be disciplined by the bar? Does he have a pre-existing duty to advise the commanding officer that the order will result in an unethical breach?

This question raises the so-called "Nuremberg" issue which is an issue of law beyond our jurisdiction. Moreover, its answer obviously would require factual analysis of the particular matter. The legal assistance officer should, however, notify the staff judge advocate and the commander that the order will result in a breach of ethics.

25. Is it ethically permissible to communicate directly with an individual's commander upon the receipt by the legal assistance officer of an allegation of nonsupport? Does the legal assistance officer have a responsibility to first allow the allegedly nonsupporting service member to answer the complaint? Would it be relevant that there exists a state law prohibiting a creditor from communicating directly with an alleged debtor's employer?

There is no prohibition against such contact absent prohibition by law, which, of course, must be respected.

26. May a full-time or part-time military judge or military magistrate provide legal assistance?

Military judges seemingly are within the Code of Judicial Conduct. Part-time judges are excused from those portions enumerated in paragrpah A of the compliance section of the Code of Judicial Conduct. This would permit "practice of law" in the form of legal assistance. Full-time judges are not permitted under the Code of Judicial Conduct to practice law.

27. After a military legal assistance officer, either during a short period of reserve active duty or during a career of many years' duration, has undertaken legal assistance work for one or more duly qualified clients as a part of military legal assistance program, may that same attorney later represent the same client or clients in his capacity as a civilian attorney in the same or related matters?

The committee is advised that a military

legal assistance officer is prohibited from accepting such representation unless expressly authorized by the appropriate judge advocate general and then under very limited circumstances. Depending upon the facts, it could, under certain circumstances, be unethical. *See Woods v. Covington County Bank*, 537 F. 2d 804 (5th Cir. 1976).

Ethical Issues in Military Legal Assistance

Edward H. Bonekemper III

Few Lawyers know that more than three thousand active duty and reserve military attorneys provide free legal services to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard and their dependents. These military legal assistance programs date from World War II and were established through efforts spearheaded by the American Bar Association and the services.

The Association's interest in these programs is reflected by the existence and activities of its Standing Committee on Legal Assistance for Military Personnel. That committee's major effort has been continuing support of congressional proposals to provide a permanent statutory basis for these programs, which are based solely on service regulations.

Certain professional and ethical issues growing out of these programs have been raised and dealt with recurrently with no permanent record having been made of their resolution. Other similar issues have arisen but have not been resolved.

The L.A.M.P. Committee for more than four years has been working with the Committee on Ethics and Professional Responsibility to produce a long-term resolution of significant ethical issues in military legal assistance. After consulting with the five services, the L.A.M.P. Committee sent draft questions to the Ethics Committee. In response, the latter prepared a draft opinion and received comments on it from the military services and the L.A.M.P. Committee.

The resulting Formal Opinion 343 firmly establishes the principle that military legal assistance officers are governed by the Code of Professional Responsibility to the same extent as other lawyers. This is consistent with the regulations of all five services.

Because the Ethics Committee understandably and properly addressed only the strictly ethical issues raised by the L.A.M.P. Committee, the remaining policy and legal issues and the practical application of the ethical principles set forth in Formal Opinion 343 should be discussed.

Answers 3, 4, and 23 indicate that military services or individual commands may limit the classes of cases military legal assistance officers undertake. In order to increase the number of beneficiaries of these programs or to apportion more "fairly" their limited lawyer resources, some services and commands have eliminated corporate, felony, or divorce matters or have restricted legal assistance to persons below a certain pay grade. Questions 19 and 20 mention classes of cases that might be and have been excluded from some military legal assistance programs.

The Ethics Committee's conclusion that these class restrictions are permissible relies on earlier informal opinions involving civilian legal aid—an indication that other legal aid opinions might be used in the future to resolve analogous situations in military legal assistance.

Although it is clear that military attorneys properly may be prohibited from undertaking certain classes of cases, it is unclear from Answer 5 whether they may refuse to undertake a particular case. The draft opinion, citing E.C. 2-26 through E.C. 2-33 and D.R. 2-109, said the military attorney could refuse a particular case on the same grounds as other attorneys. However, Opinion 343 includes an additional sentence, perhaps at the request of one or more

services during the review process, indicating that military attorneys are subject to service regulations and should consult them. The unanswered question is whether those regulations may require a military attorney to undertake a particular case he would be permitted to refuse by the cited ethical considerations and disciplinary rule.

Termination and continuation of the military attorney-client relationship, discussed in Answers 6, 21, and 27, are governed by the same principles as civilian attorneys. The Woods case, cited in Answer 27, is a well-reasoned decision permitting, under specific circumstances, the continued representation by a civilian attorney in a case initially undertaken by him as a reserve attorney on active duty.

Reasonable flexibility in the referral of cases to other attorneys is provided by Answers 7 through 9. An Admonition to consult service regulations has been added in the final opinion.

The Ethics Committee's appropriate refusal to answer Questions 10, 11, and 12 is a reflection of the fact that defining the unauthorized practice of law is a matter of state law rather than legal ethics. Many states specifically permit military attorneys admitted in other jurisdictions to try certain cases in their courts, but reductions in the number of military legal assistance officers have seriously curtailed these programs.

Military lawyers will be pleased to see the firm endorsement of the attorney-client privilege in military situations contained in Answers 13, 14, 15 and 22. These are examples of recurring situations that almost always have been resolved in the recommended manner.

Potential conflict-of-interest situations frequently arise in military legal assistance domestic relations matters because both spouses are entitled to assistance. The most equitable approach may be to establish an attorney-client relationship with the first party to seek assistance and to refer the second party to another legal assistance officer, preferably, although not necessarily, one of another service. This approach, which is consistent with Answers 17 and 18, is better than prohibiting the handling of these cases in order to avoid the remote possibility of encountering a situation in which the second party (perhaps the service member) must be refused free military counsel because of the existence of a conflict of interest and the absence of another military legal assistance office.

Lest there be any doubts raised by Answer 26, the United States Court of Military Appeals and service regulations have made it clear that military judges are, in fact, governed by the A.B.A. Code of Judicial Conduct.

This exhaustive and informative Formal Opinion 343 will serve as a guidepost for military attorneys for years to come.

(Lt. Comdr. Bonekemper is assistant chief, Port Safety Branch, United States Coast Guard Headquarters in Washington. He was graduated from Muhlenburg College in 1964 and the Yale Law School in 1967. He has been a Coast Guard attorney since 1968.)

American Bar Association Checklist For Individuals Entering the Armed Forces

This Checklist was originally published by the American Bar Association Standing Committee on Legal Assistance for Military Personnel in the American Bar Association Occasional Newsletter No. 10 at page 2.

The Standing Committee on Legal Assistance for Military Personnel has compiled a legal checklist for incoming military personnel. Long needed, the checklist is designed to be published in conjunction with the committees dealing with legal services for military personnel of the state and local bar associations, and serves to apprise service personnel of their legal rights and obligations as they prepare to enter the service.

For informational purposes, the checklist is published here. Interested state and local bar associations may contact William R. Robie,

Chairman, Standing Committee on Legal Assistance for Military Personnel, Legal Education Institute TOG, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415.

LEGAL CHECKLIST
FOR
THE MEN AND WOMEN OF_____
ENTERING
THE ARMED FORCES
OF THE UNITED STATES

(_____BAR ASSOCIATION SEAL)

PREPARED BY
THE LAWYERS OF _____

Published and Issued by
(THE VETERANS' AND SERVICEMEN'S AFFAIRS) COMMITTEE
of the
City or State Bar Association

In Conjunction with
THE STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL OF THE
AMERICAN BAR ASSOCIATION

You are entering the Military Service, either voluntarily or by being ordered from your Reserve status to active dutainly, you have given some thought to the arrangement of your affairs so as to ease the burden on your family and to protect and preserve your property during your period of military service. As a checklist in carrying out these goals, the _____ Bar Association has prepared this pamphlet for your review to be sure that you have not overlooked any item of importance. If you have questions or problems about matters herein, talk to an attorney.

Regardless of where you may be stationed while you are in the military service, _____(State)_____ remains your home and your state of legal residence (your domicile) until you take affirmative action to change your domicile to another state. Do not change your domicile without consulting an attorney.

Should matters of a legal nature arise at home while you are away, the office of the _____ Bar Association, _____(Street Address)_____, _____(City)_____, _____(State)_____ _____(Zip)_____ _____(Phone number)_____ will gladly assist you and your family should you have any doubt as to where or how to obtain legal representation. Your military legal assistance officer can also be of great help in such matters. You should contact him or her when you arrive at each new duty station to see how local laws affect you and your legal rights. He or she probably will not be able to represent you in court—particularly in business or marital matters—but will be able to prepare wills, powers of attorney and other routine legal documents.

The best wishes of all of us go with you in the performance of your duties.

You should seriously consider the possibility of taking some or all of the following steps:

Property Inventory

Prepare a complete inventory of all of your property, including your insurance policies, specify where each item is located, and place this inventory in your safe deposit box or leave it with your family. You may want to arrange for someone you trust to have access to your safe deposit box.

Reemployment Rights

Take all steps necessary to protect your job reinstatement and reemployment rights. While it is not legally necessary for you to notify your employer that you are leaving your job to enter the armed forces, written notice will avoid misunderstandings and facilitate your reemployment upon completion of service. Consult an attorney if you have difficulty obtaining reinstatement to your former position after you have completed your military service.

Accounts Payable

Make arrangements for payment of outstanding bills and loans owed by you to others. The Soldiers' and Sailors' Civil Relief Act gives you limited protection against judgments entered against you while you are in the service and also provides for the extension of time payments and reduction of interest to 6% if your entry into the service has impaired your ability to pay debts you incurred prior to service.

Before invoking the foregoing rights under the Soldiers' and Sailors' Civil Relief Act, however, you should contact your installment creditors and attempt to make arrangements with them to scale down installment payments if necessary.

Make arrangements for taxes, mortgages, contracts, insurance premiums, home repairs, etc., in connection with your home or other real property you own or are purchasing. If necessary, you can probably arrange with the lender for deferment or reduction of payments in connection with mortgages or contracts on real property while you are in the service. The Soldiers' and Sailors' Civil Relief Act provides for limited protection against foreclosure.

Your Will

Have an up-to-date will prepared by an attorney before or shortly after entering the service, sign the will and deposit the original in a safe but accessible place. (Safe deposit boxes are not recommended for will storage because it is often difficult to get into such a box after the owner's death.) In the absence of a will, state laws governing descent and distribution of property, which often will not be in accordance with your wishes, control the disposition of your property. It is essential that you see a lawyer concerning the preparation of a will because certain statutory provisions must be complied with to ensure its validity.

Insurance

Review your life insurance policies to make sure that the beneficiaries and modes of settlement are satisfactory. Also determine how the premiums are to be paid during your military service. Finally, be sure that the life insurance policies do not contain a "war clause" or some other language which eliminates or reduces coverage of you while you are in the service.

The Veterans Administration will make premium payments on your civilian life insurance policy or policies up to a total of $10,000 worth of insurance. You must apply to VA if you wish to take advantage of this provision, and the premiums must be repaid to VA within two years after leaving service. If a claim is made under such a policy, premium payments by the Veterans Administration will be deducted before any claim is paid.

Review your fire insurance, automobile insurance (including liability, comprehensive, collision and no-fault coverage), and personal property insurance policies to determine expiration dates, property coverage and method of premium payments while you are away. Remember to take steps to obtain a rebate if you cancel any policies. Notify your insurance companies when you move.

Decide whether to continue or cancel hospitalization, surgical, sickness and disability insurance policies. Check your policies for military service clauses or exclusions and consider the fact that the military service will assume responsibility for much of your and your dependents' medical care (although dependents' dental care usually is not provided by the services and other medical care may not be available). If you decide to cancel any policies, request both a pro rata return of premium and the right to resume coverage when you return from service.

Automobile

Check your automobile registration and title and automobile insurance policies to determine that they are in proper order. Advise the (State) Department of Motor Vehicles (Street address), (City), (State) (Zip) of your entry into military service, your continuing (State) legal residence, and your temporary out-of-

state residence, [and request that your driver's license be renewed free of charge as long as you are a member of the armed forces] [where such an exemption exists].

Tax Exemptions

[Insert appropriate military-related tax exemption information for your jurisdiction.] Remember that so long as you retain (State) as your state of legal domicile, the state in which you are temporarily located is prohibited by the Soldiers' and Sailors' Civil Relief Act from taxing your income or personal property (but not your real estate owned in that state).

Income Taxes

Calculate your income to date and make arrangements for the preparation and filing of your federal, state and local income tax returns on their usual due dates while you are away. [Insert appropriate tax information for your jurisdiction.] You are not excused from filing such returns and declarations of estimated tax because you are in the service. Check these matters with your attorney or accountant. Make arrangements for your present employer to forward to you your W-2 form reporting your annual income.

Check with your military legal assistance officer concerning your tax situation at each new duty station.

Tenants' Rights

If you are currently a tenant, the Soldiers' and Sailors' Civil Relief Act gives you the right to terminate your present lease by giving written notice in advance (30 days prior to monthly payment date) to your landlord. However, the Soldiers' and Sailors' Civil Relief Act *does not* give you any right to escape from legal obligations under a lease signed by you *after* entry into the service. Hereafter, do not sign any lease which does not contain a military clause permitting you to break the lease when you receive transfer orders, orders to government housing or a discharge from the service.

Your dependents cannot be evicted without the permission of a court for non-payment of rent for a house or apartment for which the rent is $150 per month or less. If the court finds that the failure to pay is attributable to your military service, it will not allow eviction for a period of three months. This waiting period is to allow you to find another place for your dependents to live.

Make any other arrangements concerning leases on business or residential property or for subletting such property while you are away. If you sublet, protect yourself by arranging to recover possession of the property upon your return.

Money Matters

Consider opening a joint checking or savings account in a local bank with your wife, father, mother or other person you trust. Discuss this matter with a banker in whom you have confidence.

Anticipate delays in setting up allotments and otherwise arrange for money to be sent to your family during the first eight weeks that you are in the service, and make arrangements for your family to be provided for during this period when they will not be receiving any money from you.

Make any necessary arrangements for your family to obtain credit for loans in emergencies during your absence.

Make lists of all your credit cards (names and numbers) to leave at home and to keep at a safe place at your duty station.

Family History

Prepare a complete list of your marriages and dependents, including the names of former spouses, the names of any children, the dates and places of marriages, births and divorces, and the dates and places of deaths of any former spouses or children. Leave this document in your safe deposit box and other safe and accessible place and also take a copy with you. If you have had a *foreign divorce*, be sure to find out (preferably through an attorney) whether that divorce will be recognized by your service as valid; if it is not, your dependents could be denied all service benefits.

Legal Documents

Obtain and take with you extra certified copies of your marriage and birth certificates, divorce decrees, your children's birth certificates, and death certificates of any former spouses. If you will be separated from your dependents, certified copies should be left with them. These certificates may save you and your dependents a great deal of time and trouble in establishing claims.

Lawsuits

If you are sued, see a lawyer immediately. If a lawsuit is filed against you while you are in the military service, the plaintiff must file a sworn statement: (1) that you are in the military service, or (2) that he is unable to find out whether or not you are in the military service. A default judgment may then be entered against you by the court only after it has appointed an attorney to represent you, and the attorney is heard in your behalf. An attorney so appointed to represent you has no power to waive any of your rights or bind you by his acts.

Under some circumstances, if a default judgment is entered against you it can be set aside. If you are aware of the lawsuit, your attorney may recommend that you ask the court to stay, or delay, the proceedings while you are in the service.

Voting

If you have not already done so, visit your [Town Clerk's office] and register to vote. This is the best possible indication that _____(State)_____ is your legal domicile. Registration before leaving the state will make it easier for you later to vote by absentee ballot. Never vote in a state which is not your legal domicile.

Legal Assistance

After you are in the service, free legal assistance will be available to you from military lawyers called judge advocates or law specialists. You should feel free to consult with them concerning any legal problems which might arise while you are in the service. Your legal dependents are also entitled to their free services. If, however, you are going to be away from your dependents for a period of time, while in basic training, overseas duty, etc., it might be wise for you to obtain an attorney whom your loved ones could contact if they need legal assistance while you are gone.

Military legal assistance officers are lawyers and must be admitted to the Bar Association of one of the fifty states or a Federal Jurisdiction. Your communications with a legal assistance officer are protected by the attorney-client privilege and the legal assistance officer is governed by the same code of ethics as a civilian lawyer. If you need the service of a civilian lawyer at any time while you are in the service, you may consult the local bar referral service or your military legal assistance officer for referral to a civilian attorney.

Powers of Attorney

Do not sign any power of attorney until you have discussed it with a lawyer. Normally, a general power of attorney is not necessary and a special or limited power of attorney will meet your needs. Be sure that any power of attorney that you sign has a termination date.

Legal Assistance Item

Major F. John Wagner, Jr., Developments, Doctrine and Literature Department, and Major Steven F. Lancaster, Administrative and Civil Law Division, TJAGSA

Items of Interest

Administration—Preventive Law Program. The following developments, their officers and agents, being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. No. 90-448) (15 U.S.C. §1701 *et seq.*) had received notices of proceedings and oppor-

tunity for hearing, which were sent to the developers pursuant to 15 U.S.C. §1706 (b), 24 C.F.R. §1701.45 (a) (1) and §1720.120, based on information obtained by the Office of Interstate Land Sales Registration showing that the statements of record and property reports contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading:

ARROWHEAD, AKA LAKE VISTA
BEAVER CREEK
RANCHO McCREA
SUNNY LAKE RANCH
TANGLEWOOD LAKE

All of the respondents filed answers in response to the notices of proceedings and opportunity for hearing, and in those answers the respondents requested a hearing on the allegations contained in the notices of proceedings and opportunity for hearing. For further information see 43 Fed. Reg. 12758-12760 (1978).

[Ref: Ch. 2, DA PAM 27-12.]

Administration—Preventive Law. The Federal Trade Commission has unanimously authorized its Chicago Regional Office to investigate the warranties used by automobile rustproofing companies and their handling of claims under these warranties. The Commission has also approved the use of compulsory process in implementing the investigation.

The purpose of the investigation is to determine whether:

- rustproofing marketers are complying with the provisions of the Magnuson-Moss Warranty Act and the Commission's Rules under it;
- use by rustproofing marketers of a refund of the application price as the only remedy for claims under their warranty violates the Magnuson-Moss Warranty Act or the Federal Trade Commission Act; and
- if this is the case, whether Commission action to obtain consumer redress would be in the public interest.

Under Commission policy the investigation will be non-public.

The existence of an investigation does not imply that violations of law have occurred. For further information call Catherine M. Kinsella, Chicago Regional Office, (312) 353-4428.

[Ref: Ch. 2, DA PAM 27-12.]

Administration—Preventive Law. The Federal Trade Commission by unanimous vote has ordered Grolier, Inc. to stop using unfair and deceptive practices in recruiting personnel, selling its products and services, and collecting debts.

Grolier's headquarters are at 575 Lexington Ave., New York City. It publishes and distributes encyclopedias, other reference works and services, training courses, and teaching machines. It sells door-to-door as well as through mail solicitations. Its publications have included Encyclopedia Americana, Encyclopedia International, New Book of Knowledge, World's Greatest Classics, Book of Popular Science, and Children's Hour.

Sustaining with some changes an initial decision by Administrative Law Judge Theodor P. von Brand, the Commission said in its opinion by Commissioner Elizabeth Hanford Dole that it has found in the record "ample evidence to support the judge's findings" of law violations.

Judge von Brand had found that Grolier has, among other things:

- furnished sales personnel with materials instructing them to misrepresent the purpose of the in-home visit, which is to sell Grolier's products;
- made deceptive pricing and endorsement claims;
- misrepresented in debt collection materials that legal action would be taken if payment is not made;
- misrepresented that door-to-door selling jobs offered were in non-selling positions such as public relations work, marketing and promotions, sales administration and management; and

- failed to disclose to job applicants the conditions placed upon salary or income guarantees.

In addition to prohibiting the violations found, the FTC's order requires Grolier to take certain affirmative actions. For example, its door-to-door sales representatives must present at the outset a 3"×5" card and direct the consumer to read it. The card must disclose in 10-point bold-face type the name of the corporation; the name of the salesperson; the term "Encyclopedia Sales Representative" (or other applicable product); and the statement: "The purpose of this representative's call is to solicit the sale of encyclopedias" (or other applicable product).

[Ref: Ch. 2, DA PAM 27-12.]

Commercial Affairs—Commercial Practices And Controls—Federal Statutory And Regulatory Consumer Protection—Fair Credit Reporting Act. The Federal Trade Commission has issued two final interpretations of the Fair Credit Reporting Act (FCRA) to clarify its relationship to the Equal Credit Opportunity Act (ECOA).

The first interpretation prohibits automatic incorporation of the past credit history of one spouse in the credit report of the other spouse. It also requires credit bureaus to establish separate credit histories for women based upon information previously filed and in their husband's name concerning accounts on which they were contractually liable or of which they had use.

The second interpretation clarifies the circumstances in which a creditor has a permissible purpose to obtain a consumer report on the spouse of the applicant without the spouse's written permission. It seeks to balance the creditor's need to know information with the nonapplicant spouse's right to provacy. Because the final interpretation would eliminate one of the permissible purposes which the proposed interpretation permitted—reliance on the spouse's income as the basis for repayment—the effective date of the second interpretation has been delayed for 60 days to allow filing of additional comments.

Interpretation 600.7—Reasonable Procedures to Assure Maximum Possible Accuracy of Information Concerning Individuals' Undesignated Information In Credit Transactions.

This Interpretation deals with the question of how credit bureaus should handle "undesignated" information generated by pre-June 1, 1977 credit accounts. (Information is "undesignated" when the credit bureau cannot determine whether it belongs to the husband, the wife or the couple.)

The Commission noted that prior to the ECOA, credit history for joint accounts and accounts of which both spouses had use was often reported only in the name of one spouse, usually the husband. The resulting lack of affirmative credit history can render the wife uncreditworthy as effectively as derogatory information and this problem is especially acute for divorced and widowed women. Creditors, credit bureaus and consumers have all expressed concern over how the problem is to be corrected.

The problem of inaccessible credit history will be solved in the future by the ECOA. It requires creditors to automatically determine whether a couple shares an account which has been or is established after June 1, 1977. The creditor must then report the payment record of the account to the credit bureau in both spouses's names. However, the problem remains for credit history from pre-June 1, 1977 accounts.

The Commission considered two alternative solutions to rectify the effects of past discrimination in the reporting of credit history through an interpretation of the FCRA: either the Commission could permit the "automatic incorporation" or "dumping" of all information contained in the husband's file into the wife's file or it could require a specific request for "designation" of credit history information from the wife before it could be placed in her file at the credit bureau.

The Commission chose the second alternative. Interpretation 600.7 prohibits the automatic incorporation or "dumping" or credit history information. It requires credit bureaus to set up reasonable procedures to allow consumers to designate credit history information upon request.

Interpretation 600.8—Permissible Purposes for Reports on Nonapplicant Spouses in Consumer Credit Transactions.

The second Interpretation (600.8) defines the circumstances in which a creditor may obtain a credit report on the spouse of an applicant for credit. The ECOA permits a creditor to consider information about a non-applicant spouse in five circumstances. This information could include facts obtained from the applicant, the spouse, the spouse's employer or the spouse's creditors. It could also include a consumer report from a credit bureau.

The Interpretation states that even though a creditor may consider information about a non-applicant spouse in five circumstances, the creditor is only permitted to obtain a credit report about the non-applicant spouse in three of the five circumstances without the non-applicant spouse's written permission. The three circumstances are:

- when the non-applicant spouse will use the credit account;
- when the non-applicant spouse will be contractually liable for the credit account;
- when the couple resides in a community property state (unless the creditor knows the applicant is relying only on separate property to repay the credit extended).

A creditor may not obtain a credit report about the non-applicant spouse without that spouse's written permission in the two remaining circumstances:

- when the applicant is relying on alimony, child support or separate maintenance payments from the non-applicant spouse to repay the credit extended;
- when the applicant is relying on the non-applicant spouse's income to repay the credit extended.

In these two circumstances in which the non-applicant spouse does not participate in the credit transaction and receives no benefit from it, the Commission found that there was no consumer credit transaction *involving the consumer* as is necessary under the FCRA to justify obtaining a report without the consumer's written instructions.

The Commission delayed its implementation of this interpretation for 60 days for receipt of additional public comments. The Interpretation will become final after that period unless comments from the public show a need to revise it again.

[Ref: Ch. 10, DA PAM 27-12.]

Family Law—Domestic Relations—Alimony, Child Support, Custody and Property Settlements. The State of Kansas has recently passed a bill which squares the amount of disposable earnings which may be garnished to enforce a support order with the Federal Garnishment Act, specifically Title 3 of the Consumer Credit Protection Act (Restrictions on Garnishment). As in the federal law, the maximum amount of disposable earnings which may be garnished to enforce a support order may not exceed 50% if the individual is supporting his or her spouse or dependent child, other than one with respect to whose support the order is sued, or 60% if there is no such support. Both amounts may be increased by 5% if there is a period of arrearage exceeding 12 weeks. 1978 Kan. Sess. Laws (H.B. 3203).

[Ref. Ch. 20, DA PAM 27-12.]

Family Law—Domestic Relations—Alimony, Child Support, Custody And Property Settlements. The recent Connecticut Supreme Court case of *Danielson v. Danielson* espouses a theory which should prove helpful to divorced noncustodial service members. In *Danielson* the Connecticut Supreme Court in effect ruled that a lower court which granted the father custody of the two children and granted the

mother visitation rights but no alimony, denied the mother the reasonable visitation rights. The father, an airlines pilot who because of his job, was able to travel without charge, earned $950 a week. The mother earned only $100 a week. The mother was not found by the lower court to be an unfit parent. The mother lives in California and the custodial father lives in Connecticut. The mother argues that she cannot afford to visit her children and therefore the lower courts failure to award any alimony makes her visitation rights illusory, thereby actually denying reasonable visitation rights. "Visitation rights are not wholly unrelated to the welfare of the children of divorced parents. Minor children are entitled to the love and companionship of both parents. For the good of the child, unless a parent is completely unfit, a decree should allow a parent deprived of custody to visit or communicate with children." *Raymond v. Raymond*, 165 Conn. 735, 741, 345 A.2d 48. The court held in this particular case that in view of the apparent financial burden on [the defendant mother] in relation to visitation, a further hearing is required limited to a consideration of a modification of [alimony] as is found to be *in the best interests of the children.*

It would appear that the logic used in *Danielson* might apply when a noncustodial service member is moving away from the location of the custodial parent. This would be especially important to the service member who is moving overseas. In *Danielson* the court considered the great distance involved between the two parents to be a changed circumstance. It would appear that in a case where the service member moves a greater distance from the custodial parent and the children that the service member's alimony could be adjusted downward accordingly to allow the non-custodial service member to be able to return periodically to exercise visitation rights thereby maintaining real visitation privileges.

[Ref: Ch 20, DA PAM 27-12.]

Family Law—Illegitimate Children. On 1 February 1978 the Department of Defense reissued DOD Directive 1344.3, "Paternity Claims and Adoption Proceedings Involving Members and Former Members of the Armed Forces." The directive standardizes procedures for the handling of paternity claims against members and former members of the Armed Forces and requests from civilian courts concerning the availability of members and former members of the Armed Forces to appear at an adoption hearing where it is alleged that such member is the father of an illegitimate child.

Allegations of paternity against members of the Armed Forces who are on active duty will be transmitted to the individual concerned by the appropriate military authorities. If there exists a judicial order or decree of paternity or child support duly rendered by a United States or foreign court of competent jurisdiction against such a member, a commanding officer in the appropriate military department will advise the member of his moral and legal obligations as well as his legal rights in the matter. See 42 U.S.C. §659. The commander will encourage the member to render the necessary financial support to the child and take any other action considered proper under the circumstances.

Communications from a judge of a civilian court concerning the availability of personnel to appear at an adoption hearing, where it is alleged that the active duty member is the putitive father, shall receive one of four replies: (1) due to military requirements, the member cannot be granted leave to attend the court hearing until a date certain; or (2) a request by the member for a leave to attend an adoption court hearing on a particular date, if made, would be approved; or (3) the member has stated in a sworn written statement a copy of which is forwarded with the response, that he is not the natural parent of the child; or (4) due to the member's unavailability caused by a specific reason, a completely responsive answer to the communications cannot be made.

The service member should be informed of the inquiry and the response and urged to obtain legal assistance.

[Ref: Ch. 23, DA PAM 27-12.]

Family Law—Illegitimate Children. In the February 1978 issue of *The Army Lawyer* the

decision reached by the New York Court of Appeals *In Re Lalli* was reported. An appeal has subsequently been filed and has been docketed in the United States Supreme Court. The issue presented before the court centers around the Constitutionality from both equal protection and due process prospectives of the New York Estates, Powers, and Trusts law which provides that illegitimate children become legitimate children of the putative father only if an order of affiliation is issued in a proceeding instituted within the lifetime of the father during the pregnancy of the mother or within two years from birth. Any subsequent Supreme Court ruling will be further reported in *The Army Lawyer*.

[Ref: Ch. 23, DA PAM 27-12.]

Family Law—Support Of Dependents—Illinois. Illinois' relative responsibility statutes no longer require children to assume liability for costs of mental health care provided to their parents. Public Act 80-1002.

[Ref: Ch. 26, DA PAM 27-12.]

Family Law—Support Of Dependents—Judicial Enforcement Of Support Obligations. The Court of Appeals of North Carolina recently ruled, in a military retirement pay garnishment attempt, that military retirement pay is the equivalent of active duty pay [e.g., wages vis a vis deferred compensation] for purposes of garnishment. North Carolina law does not allow the garnishment of prospective wages for alimony. The trial court in the case had determined that military retirement pay was the equivalent of future wages and thus not subject to garnishment under state law. The Court of Appeals affirmed the ruling of the trial court. *Phillips v. Phillips*, 239 S.E.2d 743 (1977).

[Ref: Ch. 26, DA PAM 27-12.]

Family Law—Support of Dependents—Paternity Matters. The correct citation for the decision of the Alaska Supreme Court reported under this topic in *Legal Assistance Items*, THE ARMY LAWYER, Mar. 1978, at 11, is *Reynolds v. Kimmons*, 569 P. 2d 799 (Alas. 1977); 11 CLEARINGHOUSE REV. 732 (1977).

[Ref.: Ch. 26, DA PAM 27-12.]

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

Federal Labor Relations—Unfair Labor Practices and Grievances. Two proposed regulatory changes were published in the Federal Register on 14 April 1978 (43 Fed. Reg. 15734).

The first change (29 C.F.R. § 202.6) would extend the time limit from 10 to 15 days in which parties can obtain a request for review of dismissals and denial by regional administrators in unfair labor practice representation grievability/arbitrability, and standards of conduct cases.

The second change (29 C.F.R. § 203.23) would require the Assistant Secretary of Labor for Labor-Management Relations to adopt recommended decisions by Administrative Law Judges (ALJ) where no timely or proper exceptions were filed and where the ALJ decision was consistent with laws and applicable regulations. One effect of this second change would be to make factual determinations by ALJs not reviewable by the Assistant Secretary except where linked to exceptions timely filed. Thus, the importance of filing proper and timely exception to unfavorable aspects of ALJ decisions becomes even more important to labor counselors and responsible management representatives.

The Judge Advocate General's Opinion. (Separation From The Service, Discharge Characterization) **Evidence Obtained from Truth Serum Interview Inadmissable In Administrative Proceedings To Prove Truth Of Declarations, But May Form Basis For Psychiatric Expert Opinion On Patient's Mental Status Or To Disapprove Adverse Findings And Recommendations.** DAJA-AL 1977/5310,

19 Sept. 1977. After hearing the testimony of three soldiers and considering the affidavit of a fourth, a board of officers convened UP AR 615–360 in 1943 and found that the EM had committed homosexual acts and recommended his discharge. The command directed the EM receive a psychiatric evaluation before acting on the board proceedings. As part of this evaluation, the EM was interviewed under the influence of sodium amytal ("truth serum") and damaging admissions were given concerning homosexual acts. This information was included in the psychiatric report and forwarded to the discharge authority. Thereafter, the EM was discharged with a "blue" discharge (under other than honorable conditions). The EM petitioned the ABCMR for discharge upgrading in May 1976, claiming the truth serum was administered involuntarily.

In its review, OTJAG noted that conducting the psychiatric evaluation after the board proceeding was procedurally irregular and inconsistent with the general rule that a convening authority may not consider matters outside the admissible evidence and record of board proceedings (unless made a part of the record through compliance wiht applicable procedural due process, by, *e.g.*, rehearing). It then tested for prejudice. In 1943, the governing regulation (AR 615-360) provided that special courts-martial rules of evidence were applicable to Section VIII board proceedings. After considering this factor, *United States v. Massey*, 18 C.M.R. 138 (1955), and usual administratives rules of evidence, TJAG expressed the opinion that:

(a) Because of its inherent lack of reliability and therefore relevance, evidence obtained from a witness during a "truth serum" interview is inadmissible (absent stipulation of the parties) in administraitve proceedings to prove the truth of declarations or admissions made under the influence of such drugs. However, such evidence properly may form the basis of psychiatric expert opinion concerning the person's mental status or condition. Thus expert opinion evidence is admissible in administrative proceedings, but may not include, absent stipulation, reference to specific assertions of fact made under the influence of "truth serum." Moreover, a convening authority may consider the results of a "truth serum" interview, even portions otherwise inadmissible, in determining to disapprove adverse findings and recommendations. A convening authority's determination to approve adverse findings and recommendations, however, must be based solely on evidence properly admitted in the proceedings.

(b) Use of so-called "truth serum" (*e.g.*, sodium amytal, sodium pentothal) was in 1943 and is today a standard and lawful practice for medical, especially psychiatric, diagnostic and treatment purposes. The limited permissible use of the results of a "truth serum" interview, and the admissibility of relevant medical evidence in general, is lawful because there is no doctor-patient privilege in military law.

(c) In the instant case, TJAG stated that the specific admissions of homosexual acts, obtained under the influence of "truth serum," could not be considered by the discharge authority. The over-all expert opinion and diagnosis of the psychiatrist would have been admissible before the board and thereafter could have been considered by the discharge authority; however, because this evidence was adverse and outside the record of the board proceeding, the discharge authority could not consider it a basis for approval of the board's recommendations. The only proper use of the psychiatric evaluation was as possible basis for favorable action (*i.e.*, disapproval of the board's adverse recommendations).

(d) TJAG advised the ABCMR that the submitted file, apart from the psychiatric report, contained substantial evidence in support of the board's finding and recommendation and the discharge authority's action in the case. Thus, the ABCMR could apply the presumption of administrative regularity and conclude that the discharge authority properly directed the psychiatric evaluation and considered the results solely as possible basis for action favorable to the respondent; and further, because the psychiatric report was unfavorable, the discharge authority was not influenced by it, and based his determination to approve discharge solely on the evidence and record of the board pro-

ceeding. If the ABCMR resolved the factual issues in this manner, then the proceedings and the EM's discharge under other than honorable conditions were legally sufficient. However, if the ABCMR concluded that the psychiatric report was used to bolster the unfavorable action, the proceedings would be legally deficient and the discharge should be upgraded.

Reserve Affairs Section

Reserve Affairs Department, TJAGSA

1. Legal Assistance Tapes available. The following tapes have been developed by the Administrative and Civil Law Division, The Judge Advocate General's School, and are available on a loan basis to reserve JAG detachments:

Tape 1: (45 min.) *Legal Assistance Programs and Administration.* This tape discusses the role of the reserve officer in giving legal assistance to active and retired service members and their dependents, the parameters of the Army Legal Assistance Program, and the reserve attorneys malpractice exposure while working in that program (COL Brannen, MAJ Wagner, MAJ Kirby)

Tape 2: (59 min.) *Federal Consumer Regulation and Protection.* This tape summarizes federal legislation and regulation in the consumer protection field. (MAJ Wagner)

Tape 3: (49 min.) *Family Law.* This tape discusses service members' responsibilities in support of their military and legal dependents and military retirement pay considerations in a dissolution of marriage situation. (MAJ Wagner, CPT Stephens)

Tape 4: (39 min.) *State Taxation and the Survivor's Benefit Plan.* The tape examines domicile of service members in light of renewed attempts by the States to tax their citizens and service members' benefits under the Survivors' Benefit Plan. (MAJ Zucker, CPT McLaurin)

Tapes can be obtained by writing to The Judge Advocate General's School, ATTN: Television Operations, Charlottesville, Virginia 22901.

2. Reserve Seminar to be Held in New York. A reserve seminar will be held in New York City in conjunction wit the American Bar Association's annual meeting 7–9 August 1978. The seminar will be conducted on 4–5 August 1978, and will be a joint Army-Navy-Air Force Reserve meeting. Judge Advocate General's Corps reserve officers residing in the greater New York City area and JAG reserve officers attending the ABA meeting are encouraged to attend. Topics covered will deal with the scope and status of the Army, Navy and Air Force reserve programs, pre-mobilization legal counseling, military justice update and a discussion of potential mobilization problems.

On 4 August 1978 the program is scheduled from 0900 to 1700 hours and will be held at the Union League Club in New York City. There will be a luncheon program on Friday with the Honorable Togo West, General Counsel of the Navy, as guest speaker. On Saturday, 5 August 1978, the program is scheduled from 0900–1600 hours and will be held in the Chorus Room in Lincoln Center. At the conclusion of the program on Saturday, there will be an open bar and hors d'oeuvres from 1600–1800 hours in the Grand Promenade Room in Lincoln Center. There is a $35.00 charge for the meeting which will cover coffee, doughnuts, lunch, with one cocktail, on Friday, and cocktails and hors o'doeuvres on Saturday. Interested officers can register at the same time they register for the American Bar Association meeting or can send a check to Mr. Richard Rieder, Dunnington, Bartholow, and Miller, 161 East 42d Street, New York, New York 10017.

Application for CLE credit in the states with mandatory CLE requirements is being requested.

For further information contact Captain E. R. Fink, Department of the Navy, Office of

The Judge Advocate General, Washington, D.C. 20370, (202) 694-5521.

3. JAG Reserve SJA Meeting. Over 70 Reserve Component Staff Judge Advocate officers representing Military Law Centers, Army Reserve Commands and Training Divisions met at The Judge Advocate General's School on 13–14 May 1978 for a two-day Reserve Staff Judge Advocates' meeting. Command judge advocates of the active Army from FORSCOM and the CONUS Armies joined the reserve judge advocates in discussing a number of pending changes in reserve JAG policies designed to improve mobilization readiness of reserve judge advocate officers and units. The meeting was also designed to serve as a bridge between the September 1977 and the planned December 1978 annual conferences.

Conference business began Saturday morning with welcoming remarks by TJAGSA Commandant, Colonel Barney L. Brannen, Jr. Colonel Brannen was followed by Brigadier General Robert S. Young, Commander, U.S. Army Reserve Components Personnel and Administration Center, who briefly outlined the mission and responsibility of the Reserve Center.

Next on the agenda was a Congressional Legislative report by Brigadier General Edward D. Clapp, Assistant Judge Advocate General for Special Assignments (MOB DES), and Brigadier General Jack Bohm, Chief Judge (MOB DES), U.S. Army Legal Services Agency. Generals Clapp and Bohm reviewed the status of the proposed reduction in paid drills for reserve judge advocate officers and pointed out that Congress is still holding hearings on the issue. They did, however, indicate that support for the reserve judge advocate position, *i.e.*, maintaining all 48 paid drills, was very strong. The morning activities continued with a report on the Reserve Component Technical Training (On-Site) Program and concluded with a briefing regarding pending changes in Reserve JAG policies, to include branch transfers, appointments, training, mobilization planning, and mutual support activities.

The afternoon session opened with a presentation on MOBEX '78 by Major John North, Planning Group, ODCSOPS, Department of the Army, and Major William Lehman, Plans Officer, Personnel, Plans and Training Office, OTJAG. Next, an update on the Officer Personnel Management System (OPMS-USAR) was provided by Lieutenant Colonel Oscar Carroll, OPMS, RCPAC. Officer Personnel Management System (OPMS-USAR) is the career management system developed at RCPAC for the management of all USAR officers and is analogous on the active army side to MILPERCEN. In his presentation, Lieutenant Colonel Carroll reviewed the progress of the program and reminded attendees of the training possibilities the program offered. The program offers members of the IRR from 12 up to 35 days of counterpart training, *i.e.*, training with an active Army SJA office, depending on rank and availability of funds.

The afternoon session closed with a discussion of changes to AR 140–10, the most significant of which limit the assignment of an officer to a judge advocate position authorized the grade of colonel (06), or to any staff judge advocate position in a GOCOM, ARCOM, or other major command, to a three-year tenure. Requests for exceptions to this tenure policy will be forwarded through the staff judge advocates of the CONUS Armies to The Judge Advocate General six months prior to the expiration of the three-year term of the incumbent. Exceptions to this three-year tenure policy will be granted only when there are no qualified judge advocates of the required grade available in the geographical area *or* other mission-related reasons which are justified in writing. Present ARCOM, GOCOM, or other major command staff judge advocates who have served more than three years in such positions will have a six-month transition period from the effective date of this change in order to comply. In addition, no officer of a branch other than the Judge Advocate General's Corps will be assigned to a judge advocate or legal officer position unless such officer has qualified for the position in accordance with AR 135–316 by completion of the JAG Basic or Advanced Courses, as appro-

priate, for such officer's grade. Officers who are not JAGC will be assigned to a JAG position only upon the recommendation of the CONUS Army Staff Judge Advocate and the concurrence of the Commandant, TJAGSA.

Also attending the Saturday sessions was Brigadier General Joseph N. Tenhet, Jr., Assistant Judge Advocate General/Military Law.

The meeting concluded on Sunday morning with a meeting of personnel of each Army area, followed by a General Officer panel discussion.

Building the Cuckoo's Nest

Captain Vaughan E. Taylor, Instructor, Criminal Law Division, TJAGSA

Formulating a proper and workable standard for determining whether an accused should be held responsible and therefore punished for a crime he committed, is one of the most arduous tasks faced by criminal courts. American roots in this endeavor go back to old English law where in the thirteenth century insanity was only a matter of mitigation. By the fourteenth century "absolute madness" was elevated to a complete defense and in the seventeenth century the insanity test was refined into determination of whether an adult had at least the mentality of a child fourteen years old. In the eighteenth century, Justice Tracy announced what became known as the Wild Beast test, "To be exempted from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast, such a one is never the object of punishment."

In 1843, Queen Victoria and most of her subjects were outraged when Lord Chief Justice Tindal gave an instruction that almost forced the jury to come back with their finding of "not guilty, on the ground of insanity," in the murder trial of a paranoid sailor, Daniel M'Naughton,[1] who shot Edward Drummond, secretary to the intended victim, Tory Prime Minister Sir Robert Peel, outside Number 10 Downing Street. The fifteen judges who comprised the entire English judiciary were summoned before the House of Lords to give their opinions concerning what the proper insanity standard should be. It was there that Lord Chief Justice Tindal announced a politically acceptable standard which we know as the "*M'Naghten* rule," although it bears no resemblance to the judge's instruction in the actual case:

> Jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved on their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.[2]

The *M'Naghten* rule consists of two tests: (1) the accused's knowledge of the nature and quality of the act, and (2) his knowledge of its wrongfulness, which were applied whenever he might have been suffering from a mental disease. Once the defense raised the insanity issue, the prosecution had to prove that at the time of the offense the accused either was not laboring under a defect of reason that resulted from a disease of the mind, or that in spite of a mental disease the accused nevertheless knew right from wrong and also knew the nature and quality of the criminal act.

Although almost all United States jurisdictions quickly adopted the *M'Naghten* rule, several severe problems plagued its implementation. Under the *M'Naghten* rule, a mentally ill defendant could be found sane even though his "knowledge" of the nature or wrongfulness of

his act was merely a capacity to verbalize the "right" or socially expected answers to questions relating to his crime, without such "knowledge" having any affective meaning for him as a principle of conduct. Jurisdictions differed on the burden of proof placed on the defense to raise the insanity issue and on the burden of proof by which the government would finally have to negate it. Since the rule included no definition of "disease of the mind," courts originally gave credence only to organic diseases of the brain and acute subnormality. In spite of the growing psychiatric opinion that sanity is not an "all or none" proposition, the *M'Naghten* rule required that an accused be totally deprived of his ability to know right from wrong or of his ability to know the nature and quality of his act. The degree to which "defect of reason" had to exist before an accused would be acquitted was one hundred percent. But the shortcoming of the *M'Naghten* rule which most quickly surfaced was that its two tests focused only on cognition, while completely ignoring the volitional aspects of human personality which psychiatrists believe to be more important for controlling behavior.[3]

By the end of the nineteenth century, most American jurisdictions had again followed the lead of the English courts that soon created the "irresistible impulse test" and added it to the *M'Naghten* rule. That additional standard provided that "if an accused's crime was committed as a result of an irresistible impulse, fostered by a mental disease, he should be acquitted because of insanity." But in America it soon became apparent that the irresistible impluse test misled many juries because its name impliedly restricts its applicability to sudden spontaneous acts, while improperly seeming to exclude insane propulsions that are accompanied by brooding or reflection.

In 1886, Winthrop comprehended the military's adoption of a variation of the *M'Naghten* test coupled with irresistible impulse[4] that was included at paragraph 219*g* of the Manual for Courts-Martial, U.S. Army, 1921. That standard has remained virtually unchanged in all subsequent Manuals and appears now at paragraph 120*b*, Manual for Courts-Martial, United States, 1969 (Revised edition). The language promulgated there represents an attempt to avoid the semantic pitfalls that plagued the *M'Naghten* and irresistible impulse tests it incorporates:

> A person is not mentally responsible in a criminal sense for an offense unless he was at the time, so far free from mental defect, disease, or derangement as to be able concerning the particular act charged both to distinguish right from wrong and to adhere to the right.

This formulation substituted the word "distinguish" for the word "know" and substituted the phrase "adhere to the right" for "irresistible impulse" thus rectifying two of the most troublesome aspects of the original standards. Although the "irresistible impulse test" and the *M'Naghten* "know right from wrong" test are clearly the cornerstones of the Manual rule, the *M'Naghten* test of "knowing the nature and quality of the act" is only subtly incorporated by the words "concerning the particular act charged."

Most importantly, the problem of the degree of impairment inherited from the *M'Naghten* rule still remained through the fourth sentence of paragraph 120*b* which required that the accused be completely deprived of his ability to distinguish right from wrong or to adhere to the right. Although the adverb "completely" was omitted from the 1969 Manual because it was considered redundant,[5] case law made it clear that total deprivation was still required before acquital was warranted at a court-martial.[6]

Motivated by a realization that substantial advances had been made in the field of psychiatry since the *M'Naghten* rule was created, the Court of Military Appeals held on 25 July 1977 that the military rule based on *M'Naghten* and irresistible impulse was not in harmony with modern science because:

> The *M'Naghten* standard has been criticized on several grounds, including that it ignores the medical aspects of insanity and was predicated on a layman's mis-

> understanding of the functions of the human mind . . . it fails to recognize that the concept of mental responsibility includes three elements, *i. e.*, medical, moral, and legal considerations . . . and . . . [w]hile the *M'Naghten* standard of insanity was expressed in terms of absoluteness, it was recognized that this was unrealistic and incompatible with medical science which does not classify mental conditions in absolute terms.[7]

The court reasoned that the standard for determining mental responsibility is a matter of substantive law and, therefore, not within the President's rulemaking powers under Article 36, U.C.M.J. There was some precedent for this position stemming from the court's 1954 creation of the defense of partial mental responsibility where the 1951 Manual was silent.[8] That defense is now incorporated in the 1969 Manual at paragraph 120*c*, but *United States v. Vaughn*, 23 C.M.A. 343, 49 C.M.R. 747 (1975), overruled the President's formulation to the extent it precluded the application of the partial mental responsiblity defense to a charge of unpremeditated murder. Since Congress has never adopted a complete insanity standard, the duty fell on the Court of Military Appeals to define the standard required to determine an accused's mental responsibility.

To formulate this standard, the court looked to the federal courts in general and to the experience of the District of Columbia Court of Appeals in particular. The latter is the leading American experimenter in the area of developing a proper standard for mental responsibility. In 1954 a unique test created by the Supreme Court of New Hampshire[9] was adopted by the court of appeals in the case of *Durham v. United States*,[10] specifying "that an accused is not criminally responsible if his unlawful act was the product of mental disease or defect." [11] This new test was designed to allocate properly the roles of expert witnesses and jurors by allowing the experts to present evidence of or negating mental disease while the fact finders determined causation. The seemingly simple *Durham* rule was an extremely broad test that had widened the door of "trial by medical label." By 1962 the D.C. court met *en banc* in *McDonald v. United States*[12] in an effort to get the sanity determination back from the grasp of the psychiatrists and place it in the hands of the jury. They attempted to do this by creating a legal definition of "mental disease" which provided that "mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." By using concete concepts in terms of behavior and control, however, the D.C. court had moved back toward the *M'Naghten*/irresistible impulse formulations. The Court of Military Appeals realized back in 1954 that the Manual standard was preferable to the *Durham* rule,[13] but it was not until 1972 that the Court of Appeals for the District of Columbia came to a similar conclusion in *United States v. Brawner*.[14] In that case a *M'Naghten*/irresistible impulse based standard developed by the American Law Institute replaced the *Durham* rule. The latter had failed mainly because juries were unable to determine whether a crime was the "product" of a mental disease or defect in a forum where experts expressed opinions on the ultimate issues before the court. So the District of Columbia Circuit came into line with all other circuits, except the First, by adopting the ALI standard found in Model Penal Code § 4.01 Proposed Official Draft (May 4, 1962). Since the D.C. court had its own definition of mental disease or defect formulated in *McDonald* and preserved in *Brawner*, the D.C. court only adopted the first paragraph of the test. Although the Sixth circuit had also only adopted the first paragraph of the test, the Court of Military Appeals chose in *United States v. Frederick*,[15] to adopt the entire provision:

> (1) A person is not responsibile for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.
>
> (2) As used in this article, the terms "mental disease or defect" do not include

an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The ALI test is substantively a combination of the *M'Naghten* and irresistible impulse standards, semantically refined to comport with modern psychiatric views. It substitutes "appreciate" for "know" so that the same offender must be emotionally as well as intellectually aware of the significance of his conduct. "Conform" replaces "control" while avoiding any reference to the misleading words "irresistible impulse."

Because similar semantic refinements existed in the Manual rule, the only meaningful difference is that the ALI test requires only a substantial incapacity instead of the complete or total deprivation of capacity required by all the other standards modeled after *M'Naghten*/ irresistible impulse.

This change is important for the obvious reason that it makes the standard more realistic in that hardly any insane person is totally deprived of his ability to understand the difference between right and wrong or totally deprived of his ability to conform his conduct to the mandates of society around him. If that were not so, patients in our mental institutions would be completely out of the control of those who care for them. As the drafters of the Model Penal Code noted in their comments to § 4.01:

> the schizophrenic, for example, is disoriented from reality; the disorientation is extreme; but it is rarely total. Most psychotics will respond to a command of someone in authority within the mental hospital; they thus have some capacity to conform to a norm. But this is very different from the question whether they have the capacity to conform to requirements that are not thus immediately symbolized by an attendant or policeman at the elbow. Nothing makes the inquiry into responsibility more unreal for the psychiatrist than limitation on the issue to some ultimate extreme of total incapacity, when clinical experience reveals only a graded scale with marks along the way.[16]

The change to a test of substantial impairment is important for another more subtle reason pointed out by the Court of Military Appeals:

> Another weakness perceived in the *M'Naghten* standard is that it fails to recognize that the concept of mental responsibility includes three elements, *i. e.*, medical, moral, and legal considerations. Even the more modern *Durham* rule was found to inadequately distinguish the three elements involved . . . . Because the medical expert under the *M'Naghten* standard is required to express an opinion in absolute terms, that is complete lack of capacity, such an opinion necessarily includes all three of the components of mental responsibility. Thus, despite instructions to the contrary, a situation existed whereby the medical expert was exerting undue influence in the nonmedical components.[17] [Footnote omitted]

The reasoning behind the creation of a standard of substantial impairment is further articulated by the comments to § 4.01 reflecting the ALI majority opinion:

> The law must recognize that when there is no black and white it must content itself with different shades of gray. The draft, accordingly, does not demand *complete* impairment of capacity. It asks instead for *substantial* impairment. This is all, we think, that candid witnesses, called on to infer the nature of the situation at a time that they did not observe, can ever confidently say, even when they know that a disorder was extreme.
>
> If a substantial impairment of capacity is to suffice, there remains the question of whether this alone should be the test or whether the criterion should state the principle that measures how substantial it must be. To identify the degree of impairment with precision is, of course, impossible both verbally and logically. The recommended formulation is content to rest upon the term "substantial" to support the weight of judgment; if capacity is greatly

impaired, that presumably should be sufficient.[18]

So the term "substantial" has no absolute definition and the closest we can analogize is that it is synonomous with "great." Therein lies the weakness of the ALI test, a weakness that is accentuated by the apparent conflict between the wording of the standard itself and the comments that tell us what it means. The ALI standard is written in terms of an accused who "lacks substantial capacity" which the comments tell us means a "substantial impairment of capacity," but grammatically those two phrases do not say the same thing. Under the wording of the standard, an accused who lacks substantial (great) capacity must be acquitted, but the comments say that acquittal results only if the accused is substantially (greatly) impaired. If we hypothetically define substantial as 70% for the sake of analysis, an accused who lacks 70% capacity (*i. e.*, has a greater than 30% incapacity) must be acquitted while the comments explain that it really takes at least a 70% incapacity to entitle one to an acquittal. For example, an accused who has a 40% impairment of capacity, lacks substantial capacity because his capacity is only 60% but he is not suffering from 70% impairment of capacity that the comments require for acquittal. If the standard were strictly construed, many more accuseds would be acquitted than was the intent of the drafters. The American Law Institute was trying to make minor decrease in the amount of impairment required by the *M'Naghten*/irresistible impulse rule, *i.e.*, total down to substantial impairment. But their articulation of that goal in the standard itself has unfortunately left room for argument, although every court using the standard has recognized it as a test of substantial impairment. The ambiguity could be easily cured by reversing the position of the words "lacks substantial" to read "substantially lacks," because it is clear that a person who has a substantial impairment of capacity is one who substantially lacks capacity, (*i.e.*, a great impairment of capacity is equal to a great lack of capacity).

Another problem with the ALI test is that it does not clearly define mental "disease or defect." Subsection two explains only that those words "do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." Unlike the Sixth and D.C. Circuits, the Court of Military Appeals held in *Frederick* that the provision is necessary to insure that mental responsibility is a distinct and separate concept from criminal and antisocial conduct. Quoting *United States v. Freeman*,[19] the Court of Military Appeals said, "repeated criminality cannot be the *sole* ground for a finding of mental disorder; a contrary holding would reduce to absurdity a test designed to encourage full analysis of all psychiatric data and would exculpate those who knowingly and deliberately seek a life of crime." [20]

But unlike the definition of "mental disease or defect" promulgated in *McDonald*, the ALI formulation is exclusive rather than inclusive. The Court of Military Appeals did not define "mental disease or defect" beyond the skimpy totality of what the American Law Institute said about it in their wording of Model Penal Code § 4.01(2). Thus, each service must now decide whether judges in their instructions should further define those terms for the court members. The Air Force has decided to embellish the Model Penal Code exclusion with *McDonald* inclusion, but the Army as yet has not decided whether to follow suit. The problem with the *McDonald* definition is that it does not really clarify anything and it seems overly broad in that almost anything, including momentary rage, "substantially affects mental or emotional processes and substantially impairs behavior controls" and could easily be erroneously classified as a mental disease or defect if the proper emphasis was not given to the preliminary phrase "any abnormal condition of the mind." The Navy has stayed with the definition found in paragraph 120*b* of the Manual which states, "The phrase mental disease, defect . . . comprehends those irrational states of mind which are a result of deterioration, destruction, or malfunction of the mental, as distinguished from the moral, faculties." In an effort to specify the meaning of "mental disease or defect" in terms that have more specific meaning, LTC Ronald B. Steward, an Army

military judge, has proposed that court members simply be told:

> The key word here is mental, as opposed to any other type of defect, such as defect of morals, character, behavior, development, or culture. Those defects of character or personality resulting from inadequate or improper training and development, lack of moral restraint, or a personal, social or cultural standard of conduct which differs from that of society as a whole, are not to be construed as mental in nature.

This definition is good because it tells us something concrete, but it too is a definition of exclusion only. The ideal instruction would couple it to the *McDonald* standard, in addition of course to the Model Penal Code § 4.01(2) adopted by the Court of Military Appeals. Furthermore, there is no reason to disregard the Manual definition as it is used by the Navy, since that part of paragraph 120*b* was not struck down in *Frederick*, and a combination of the four definitions supplies all of the best legal thinking available, much of it having already aided juries for years.

Finally, there is the matter of whether the Court of Military Appeals was correct in selecting the word "criminality" for use in the military's version of the ALI test instead of the word "wrongfulness." Some Federal courts [21] have opted to use "wrongfulness" to exclude criminal responsibility in those cases where a defendant realizes his conduct is criminal but because of a delusion, believes his action is morally justified. The problem with that reasoning is that it might allow an accused to be acquitted if his personal moral code was not violated, even if he knew he was breaking the law. There are just too many Charles Mansons around to allow such a loophole in the standard. By adopting the word "criminality" the Court of Military Appeals insures that we will punish those who know they are violators of the law and yet properly acquit those whose delusions substantially impair their capacity to appreciate the criminality of their act.

With the adoption of this version of the ALI test, the Court of Military Appeals has brought the military's legal standard for determining mental responsibility into line with the advances of modern psychiatry. The test is not perfect, but it represents an important improvement in the *M'Naghten*/irresistible impluse standard we have turned to for over a century. The following suggested judge's instruction is offered to help the ALI test add to the justice of our military system:

PROPOSED MILITARY JUDGE'S INSTRUCTIONS

You are advised that the issue of the accused's insanity at the time of the offense has been raised by the evidence with respect to the offense(s) of ____. In determining this issue, you must consider all relevant facts and circumstances, including but not limited to ____. Insanity at the time of the offense is a complete defense to the offense of ____. Unless you are satisfied beyond a reasonable doubt that the accused was mentally responsible at the time of the commission of an offense charged—that is, was not insane, the accused cannot legally be convicted of that offense.

The legal test for insanity is: a person is not mentally responsible if at the time of the alleged offense as a result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. The court then, must decide two questions:

(1) Whether there existed in the accused at the time of the offense a mental disease or defect; and,

(2) Whether such a disease or defect resulted in a lack of substantial capacity on the part of the accused, concerning the particular acts charged, either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

On the question of whether there existed in the accused at the time of the offense a mental disease or defect, the following pertains. The words "mental disease or defect" include any abnormal condition of the mind which substantially affects mental or emotional processes and

substantially impairs behavior controls. The phrase comprehends those irrational states of mind which are the result of deterioration, destruction, or malfunction of the mental, as distinguished from the moral, faculties. The key word here is mental, as opposed to any other type of defect, such as a defect of morals, character, behavior, development, or culture. Those defects of character or personality resulting for inadequate or improper training and development, lack of moral restraint, or a personal, social, or cultural standard of conduct which differs from that of society as a whole, are not to be construed as mental in nature. The words "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Whether the accused had a mental disease or defect is an important inquiry, for lack of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law is a defense only if it is the result of a mental disease or defect.

The second question for you to decide, is whether such disease or defect resulted in a lack of substantial capacity on the part of the accused, concerning the particular act(s) charged, either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. Notice that in order for the condition of legal insanity to exculpate the accused, there must be a consequential relationship between the mental disease or defect and the offense; that is, the disease or defect must cause the accused's lack of substantial capacity to appreciate the criminality of his conduct in the particular offense alleged—or cause the accused's lack of substantial capacity to conform his conduct to the requirements of the law in the particular offense alleged. A lack of substantial capacity exists when there is a substantial or great impairment of that capacity; therefore, this defense does not require a compelte impairment of capacity. Furthermore, if you are satisified the accused possessed substantial capacity both to conform his conduct to the requirements of law and to appreciate the criminality of his conduct, then he will not escape criminal responsibility solely as a result of the fact that his personal moral code was not violated by his commission of the offense(s). On the other hand, if at the time of the offense(s), as a result of mental disease or defect, the accused had a delusion of such a nature that he believed the offense(s) were/were not criminal, he cannot be held mentally responsible and must be acquitted.

When, as in this case, some evidence (is introduced which) raises the issue of the accused's mental responsibility at the time of offense, the sanity of the accused is an essential issue of fact. In determining this issue you are entitled to consider his sanity in the light of your common sense and your general knowledge of human nature and the ordinary affairs of life. Thus, you may consider that the general experience of mankind is that most people are sane. This general experience may be taken into account in weighing the evidence pertaining to the issue of the accused's sanity.

The burden of proving the sanity of the accused beyond reasonable doubt is upon the prosecution, and there is no requirement that the accused prove that he was insane at the time of the alleged offense. If, in the light of all the evidence and taking into consideration your general knowledge of human nature and the ordinary affairs of life, you have a reasonable doubt as to the mental responsibility of the accused at the time of the alleged offense, you must find the accused not guilty of that offense.

Notes

1. Original spelling found in the Queen Against Daniel M'Naughton (1843), 4 St. Tr. (N.S.) 847.

2. House of Lords, 10 Cl. & F. 200, 8 Eng. Rep. 718.

3. *See*, Durham v. United States, 214 F.2d 862, 870-71 (D.C. Cir. 1954).

4. 1 WINTHROP, MILITARY LAW 413-14 (1886).

5. U.S. DEP'T OF ARMY, PAMPHLET NO. 27-2, ANALYSIS OF CONTENTS, MANUAL FOR COURTS-MARTIAL, UNITED STATES 1969 (REVISED EDITION), 24-1 (1970).

6. United States v. Collier, 49 C.M.R. 719 (A.F.C.M.R. 1975); United States v. Emerson, 44 C.M.R. 702 (A.C.M.R. 1971).

7. United States v. Frederick, 3 M.J. 320, 326-236 (C.M.A. 1977).

8. United States v. Kunak, 5 C.M.A. 346, 17 C.M.R. 346 (1954), United States v. Edwards, 4 C.M.A. 299, 15 C.M.R. 299 (1954), and United States v. Higgins, 4 C.M.A. 143, 15 C.M.R 143 (1954).

9. State v. Pike, 49 N.H. 399 (1879).

10. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

11. *Id.* at 874-75.

12. McDonald v. United States, 312 F.2d 847 (D.C. Cir. *en banc* 1962).

13. United States v. Kunak, 5 C.M.A. 346, 17 C.M.R. 346 (1954).

14. United States v. Brawner, 153 U.S. App. D.C. 1, 471 F.2d 969 (1972) (*en banc*).

15. United States v. Frederick, 3 M.J. 230 (C.M.A. 1977).

16. Model Penal Code § 4.01 (Proposed Official Draft 1962) Comment 4.

17. United States v. Frederick, 3 M.J. 230, 237 (C.M.A. 1977).

18. Model Penal Code § 4.01 (Proposed Official Draft 1962) Comment 4.

19. United States v. Freeman, 357 F.2d 606, 625 (2d Cir. 1966).

20. United States v. Frederick, 3 M.J. 230, 238 (C.M.A. 1977).

21. *See* Wade v. United States, 426 F.2d 64 (9th Cir. 1970).

Judiciary Notes

U.S. Army Judiciary

ADMINISTRATIVE NOTES

1. Court-Martial Convening Orders. Copies of all court-martial convening orders to which the charges have been referred must be attached to the record of trial. They are necessary for complete appellate review to insure that trial and defense counsel have not served in an inconsistent capacity in the same case prior to trial.

2. Records of Trial—Exhibits. Often, government and defense counsel introduce documentary evidence with leave to substitute copies at the end of trial. These substituted copies, and in many instances the proffered documents, are sometimes completely or partially illegible. In one case, involving records of nonjudicial punishment, it was impossible to determine, because of the poor quality of the exhibits in the record of trial, whether the originals contained necessary signatures or check marks in the appropriate blocks. If machine copies of documents are to be used at trial or are properly substituted in the record, those responsible must insure that the quality of the copies is satisfactory for legal review.

3. Initial Promulgating Orders Errors Corrected by the A.C.M.R. The following errors in initial promulgating orders were corrected by the Army Court of Military Review for the month of April 1978:

(a) Failure to properly set forth the pleas of the accused—3 cases.

(b) Failure to include a statement as to whether trial was by military judge alone and a statement of the number of previous convictions considered during the sentencing portion of the trial. One case each.

CLE News

1. Florida. The initial three-year period of operation of the Florida Designation Plan will end on October 2, 1978. Renewals for lawyers participating in the plan will begin November 1, 1978. At this time, The Florida Bar plans to notify each participant in the plan approximately six months prior to expiration of his or her permission of that fact and supply them with the appropriate information, forms and materials to request permission to renew their designations.

Both resident and nonresident courses spon-

sored by the U.S. Army Judge Advocate General's school may be eligible for an educational credit under the plan upon review by the appropriate advisory committee. Florida Bar members participating in the Florida Designation Plan may contact Rayford H. Taylor, Designation Director, Florida Designation Plan, The Florida Bar, Tallahassee, Florida 32304, (904) 222-5286, about credit for courses they have attended or wish to attend. Upon receipt of the appropriate information from the participating member, the course will be reviewed and credit awarded.

In view of the large number of the renewals expected and the length of time involving course approval review, Mr. Taylor encourages those wishing credit for courses they have attended to contact his office well in advance of their renewal date. If this is not done, some individuals may find their current permission expiring prior to the approval of their renewal request.

2. TJAGSA CLE Courses.

July 24-August 4: 75th Procurement Attorney's Course (5F-F10).

August 7-11: 8th Law Office Management Course (7A-713A).

August 7-18: 2d Military Justice II Course (5F-F31).

August 21-25: 42d Senior Officer Legal Orientation Course (5F-F1).

August 28-31: 7th Fiscal Law Course (5F-F12).

September 18-29: 77th Procurement Attorney's Course (5F-F10).

October 2-6: 9th Law of War Workshop (5F-F42).

October 10-13: Judge Advocate General's Conference and CLE Seminars.

October 16-December 15: 88th Judge Advocate Officer Basic (5-27-C20).

October 16-20: 5th Defense Trial Advocacy (5F-F34).

October 23-November 3: 78th Procurement Attorneys' Course (5F-F10).

November 6-8: 2d Criminal Law New Developments (5F-F35).

November 13-16: 8th Fiscal Law (5F-F12).

November 27-December 1: 43d Senior Office Legal Orientation (5F-F1).

December 4-5: 2d Procurement Law Workshop (5F-F15).

December 7-9: JAG Reserve Conference and Workshop.

December 11-14: 6th Military Administrative Law Developments (5F-F25).

January 8-12: 9th Procurement Attorneys' Advanced (5F-F11).

January 8-12: 10th Law of War Workshop (5F-F42).

January 15-17: 5th Allowability of Contract Costs (5F-F13).

January 15-19: 6th Defense Trial Advocacy (5F-F34).

January 22-26: 44th Senior Officer Legal Orientation (5F-F1).

January 29-March 30: 89th Judge Advocate Officer Basic (5-27-C20).

January 29-February 2: 18th Federal Labor Relations (5F-F22).

February 5-8: 8th Environmental Law (5F-F27).

February 12-16: 5th Criminal Trial Advocacy (5F-F32).

February 21-March 2: Military Lawyer's Assistant (512-71D20/50).

March 5-16: 79th Procurement Attorneys' (5F-F10).

March 5-8: 45th Senior Officer Legal Orientation (War College) (5F-F1).

March 19-23: 11th Law of War Workshop (5F-F42).

March 26-28: 3d Government Information Practices (5F-F28).

April 2-6: 46th Senior Officer Legal Orientation (5F-F1).

April 9-12: 9th Fiscal Law (5F-F12).

April 9-12: 2d Litigation (5F-F29).

April 17-19: 3d Claims (5F-F-26).

April 23-27: 9th Staff Judge Advocate Orientation (5F-F52).

April 23-May 4: 80th Procurement Attorneys' Course (5F-F10).

May 7-10: 6th Legal Assistance (5F-F23).

May 14-16: 3d Negotiations (5F-F14).

May 21-June 8: 18th Military Judge (5F-F33).

May 30-June 1: Legal Aspects of Terrorism.*

June 11-15: 47th Senior Officer Legal Orientation (5F-F1).

June 18-29: JAGSO (CM Trial).

June 21-23: Military Law Institute Seminar.

July 9-13 (Proc) and July 16-20 (Int. Law): JAOGC/CGSC (Phase VI Int. Law, Procurement).

July 9-20: 2d Military Administrative Law (5F-F20).

July 16-August 3: 19th Military Judge (5F-F33).

July 23-August 3: 81st Procurement Attorneys' Course (5F-F10).

August 6-October 5: 90th Judge Advocate Officer Basic (5-27-C20).

August 13-17: 48th Senior Officer Legal Orientation (5F-F1).

August 20-May 24, 1980: 28th Judge Advocate Officer Graduate (5-27-C22).

August 27-31: 9th Law Office Management (7A-713A).

September 17-21: 12th Law of War Workshop (5F-F42).

September 28-28: 49th Senior Officer Legal Orientation (5F-F1).

* Tentative.

3. TJAGSA Course Prerequisites and Substantive Content.

GENERAL INFORMATION

The Judge Advocate General's School is located on the north grounds of the University of Virginia at Charlottseville. The mission of the School is to provide resident and nonresident instruction in military law. The School's faculty is composed entirely of military attorneys.

THE ACADEMIC DEPARTMENT

The Academic Department develops and conducts resident and nonresident instruction. The organization of the Department includes Criminal Law, Administrative and Civil Law, Internal Law and Procurement Law Divsions. Within the Department, the Nonresident Instruction Branch administers the School's correspondence course program and other nonresident instruction.

COURSES OFFERED

The Judge Advocate General's School offers a total of 30 different resident courses. The official source of information concerning courses of instruction at all Army service schools, including the Judge Advocate General's School, is the U.S. Army Formal Schools Catalog (DA Pam 351-4). Attendance by foreign military personnel is governed by applicable Army regulations. Quotas for most courses offered at The Judge Advocate General's School may be obtained through usual unit training channels. Exceptions to this policy are the Judge Advocate Officer Basic Course, Judge Advocate Officer Graduate Course, and Staff Judge Advocate Orientation Course, quotas for which are controlled by the Personnel, Plans and Training Office in the Office of The Judge Advocate General; the Military Judge Course, quotas for which are controlled by the Army

Judiciary in Washington, D.C.: and the Senior Officer Legal Orientation Course, quotas for which are controlled by MILPERCEN. Inquiries concerning quotas and waivers of prerequisites should be directed to Commandant, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901, ATTENTION: Academic Department.

TABLE OF CONTENTS

COURSE NUMBER	*TITLE*
5-27-C20	Judge Advocate Officer Basic
5-27-C22	Judge Advocate Officer Graduate
5F-F1	Senior Officers' Legal Orientation
5F-F10	Procurement Attorneys'
5F-F11	Procurement Attorneys' Advanced
5F-F12	Fiscal Law
5F-F13	Allowability of Contracts Costs
5F-F14	Negotiations
5F-F15	Procurement Attorneys' Workshop
5F-F20	Military Administrative Law
5F-F21	Civil Law
5F-F22	Federal Labor Relations
5F-F23	Legal Assistance
5F-F25	Military Administrative Law Developments
5F-F26	Claims
5F-F27	Environmental Law
5F-F28	Government Information Practices
5F-F29	Litigation
5F-F30	Military Justice I
5F-F31	Military Justice II
5F-F32	Criminal Trial Advocacy
5F-F33	Military Judge
5F-F34	Defense Trial Advocacy
5F-F35	Criminal Law New Developments
5F-F40	International Law I
5F-F41	International Law II
5F-F42	Law of War Workshop
5F-F52	Staff Judge Advocate Orientation
7A-713A	Law Office Management
512-71D20/50	Military Lawyer's Assistant

JUDGE ADVOCATE OFFICER BASIC COURSE (5-27-C20)

Length: 9 weeks.

Purpose: To provide officers newly appointed on the Judge Advocate General's Corps with the Basic orientation and training necessary to perform the duties of a judge advocate.

Prerequisites: Commissioned officer who is a lawyer and who has been appointed or anticipates appointment in the Judge Advocate General's Corps or his service's equivalent. Security clearance required: None.

Substantive Content: The course stresses military criminal law and procedure and other areas of military law which are most likely to concern a judge advocate officer in his first duty assignment.

Criminal Law: Introduction to military criminal law and the practical aspects of criminal procedure and practice.

Administrative and Civil Law: Introduction to personnel law (military and civilian), legal basis of command, claims, legal assistance and Army organization and management.

Procurement Law: Introduction to the law of U.S. Government contracts.

International Law: Introduction to Law of War and Status of Forces Agreements.

JUDGE ADVOCATE OFFICER GRADUATE COURSE (5-27-C22)

Length: 40 weeks.

Purpose: To provide branch training in and a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers, with emphasis on the positions of deputy staff judge advocates and staff judge advocates.

Prerequisites: Commissioned officer: Career officer of the Armed Forces whose branch is JAGC or the service's equivalent, in fourth to eighth year of active commissioned service. Army officers are selected for attendance by The Judge Advocate General.

Service Obligation: Two years.

Substantive Content: The Judge Advocatre Officer Graduate Course prepares career military lawyers for future service in staff judge advocate positions. To accomplish this, the course is oriented toward graduate-level legal education comparable to the graduate programs of civilian law schools. The American Bar Association has approved the course as meeting its standards of graduate legal education. The course is conducted over a two-semester academic year totaling approximately 42 credit hours. It consists of the following curriculum elements:

1. Core Courses consisting of approximately 28 credit hours of criminal law, administrative and civil law, international law, and procurement law subjects, military subjects and communications.

2. Electives presented both by The Judge Advocate General's School and the University of Virginia School of Law totaling approximately 14 credit hours.

SENIOR OFFICERS' LEGAL ORIENTATION COURSE (5F-F1)

Length: 4-½ days.

Purpose: To acquaint senior commanders with installation and unit legal problems encountered in both the criminal and civil law fields.

Prerequisites: Active duty and reserve component commissioned officers in the grade of colonel or lieutenant colonel about to be assigned as installation commander or deputy; service school commandant; principal staff officer (such as chief of staff, provost marshal, inspector general, director of personnel) at division, brigade or installation levels; or as a brigade commander. As space permits, those to be assigned as battalion commanders may attend. Security clearance required: None.

Substantive Content: Administrative and Civil Law: Judicial review of military activities, military aid to civil authorities, installation management, labor-management relations, civilian personnel law, military personnel law, nonappropriated funds, civil rights, legal assistance, claims and government information practices. Criminal Law: Survey of legal principles relating to search and seizure, confessions, and nonjudicial punishment. Emphasis is placed on the options and responsibilities of convening authorities before and after trial in military justice matters, including the theories and practacabilities of sentencing. International Law: Survey of Status of Forces Agreements and Law of War. Procurement Law: Survey of the Anti-Deficiency Act.

PROCUREMENT ATTORNEYS' COURSE (5F-F10)

Length: 2 weeks.

Purpose: To provide basic instruction in the legal aspects of government procurement at the installation level. Completion of this course also fulfills one-half of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Graduate Course and covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government, with six months' or less procurement experience. Security clearance required: None.

Substantive Content: Basic legal concepts regarding the authority of the Government and its personnel to enter into contracts: contract formation (formal advertising and negotiation), including appropriations, basic contract types, service contracts, and socio-economic policies; contract performance, including modifications; disputes, including remedies and appeals.

PROCUREMENT ATTORNEYS' ADVANCED COURSE (F-F11)

Length: 1 week.

Purpose: To provide continuing legal education and advanced expertise in the statutes and regulations governing government procurement. To provide information on changes at the policy level.

Prerequisites: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F-10), or equivalent training, or have at least one year's experience as a procurement attorney. Security clearance required: None.

Substantive Content: Advanced legal concepts arising in connection with the practical aspects of contracting, funding, competitive negotiation, socio-economic policies, government assistance, state and local taxation, modifications, weapons system acquisition, truth in negotiations, terminations, labor relations problems, contract claims, litigation. Course will normally be theme oriented to focus on a major area of procurement law. Intensive instruction will include current changes in the laws, regulations and decisions of courts and boards. The 9th Procurement Attorneys' Course Theme deals with contract formations with emphasis on soci-economic policies and other legislation.

FISCAL LAW COURSE (5F-F12)

Length: 3-1/2 days.

Purpose: To provide a basic knowledge of the laws and regulations governing the obligation and expenditure of appropriated funds and an insight into current fiscal issues within the Department of The Army. The course covers basic statutory constraints and administrative procedures involved in the system of appropriation control and obligation of funds within the Department of Defense. This course emphasizes the methods contracting officers and legal and financial personnel working together can utilize to avoid over-obligations.

Prerequisites: Active duty commissioned officer of an armed force, or appropriate civilian employee of the U.S. Government actively engaged in procurement law, contracting or administering funds available for obligation on procurement contracts. Must be an attorney, contracting officer, comptroller, Finance & Accounting Officer, Budget Analyst or equivalent. Attendees should have completed TJAGSA Procurement Attorneys' Course, a financial manager's course, a comptrollership course or equivalent.

Substantive Content: Practical legal and administrative problems in connection with the funding of government contracts. Basic aspects of the appropriations process, administrative control of appropriated funds, the Anti-Deficiency Act, Industrial and Stock Funds, and the Minor Construction Act will be covered.

ALLOWABILITY OF CONTRACTS COSTS COURSE (5F-F13)

Length: 2½ days.

Purpose: The Allowability of Contract Costs Course is a basic course designed to develop an understanding of the nature and means by which the Government compensates contractors for their costs. The course focuses on three main areas: (1) basic accounting for contract costs; (2) the Cost Principles of ASPR § 15; and (3) the Cost Accounting Standards Board and the Costs Accounting Standards. The course is a mixture of lectures and panel discussions aimed at covering substantive and practical issues of contract costs. This course is not recommended for attorneys who are experienced in application of cost principles.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one year of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent.

Substantive Content: This introductory course will focus on three main areas: functional cost accounting terms and application, the Cost Principles, and Cost Accounting Standards.

NEGOTIATIONS COURSE (5F-F14)

Length: 2-½ days.

Purpose: The Negotiations Course is designed to develop advanced understanding of the negotiated competitive procurement method. The course focuses on the attorney's role in negotiated competitive procurement, including: (1) when and how to use this method; (2) development of source selection criteria; (3) source selection evaluation process; (4) competitive range; (5) oral and written discussions; and (6) techniques.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government, with at least one, but not more than five years of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent. Security clearance required: None.

Substantive Content: The course will focus on solicitation and award by negotiation including selection of the procurement method, use of the negotiation process in the development of source selection, discussion and techniques.

PROCUREMENT ATTORNEYS' WORKSHOP (5F-F15)

Length: 2 days.

Purpose: The workshop provides an opportunity to examine, in the light of recent developments, and discuss in depth current procurement problems encountered in installation SJA offices. Attorneys will be asked to submit problems in advance of attendance. These will be collected, researched and arranged for seminar discussion under the direction of the Procurement Law faculty.

Prerequisites: Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. Government with not less than 12 months' procurement experience who are currently engaged in the practice of procurement law at installation level. Security clearance required: None.

Substantive Content: Discussion of current developments in procurement law and their application to the problems currently experienced in installation level procurement.

MILITARY ADMINISTRATIVE LAW COURSE (5F-F20)

Length: 2 weeks.

Purpose: To provide a working knowledge of selected subjects in the area of administrative law. (Students may attend either the week of personnel law instruction or the week of legal basis of command instruction, or both.) This course is specifically designed to fulfill one-half

of the reserve requirements of Phase IV of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase IV.

Prerequisites: Active duty or reserve component military attorney, 02–04, or appropriate civilian attorney employed by the U.S. Government. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by Correspondence. Security clearance required: None.

Substantive Content: Personnel Law: Basic concepts of personnel law and judicial review of military activities: Statutes, regulations and court decisions relating to military personnel law, boards of officers, civilian personnel law, labor-management relations and federal review of military activities. Legal Basis of Command: Statutes, regulations and court decisions relating to the control and management of military installations and nonappropriated funds, environmental law, military assistance to civil authorities, and criminal and civil liabilities of military personnel.

CIVIL LAW COURSE (5F–F21)

Length: 2 weeks.

Purpose: To provide a working knowledge of legal assistance and claims. (Students may attend either the week of claims instruction or the week of legal assistance instruction, or both.) This course is specifically designed to fulfill one-half of the requirements of Phase IV of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase IV.

Prerequisites: Active duty or reserve component military attorney, 02–04, or appropriate civilian attorney employed by the U.S. Government. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Legal Assistance: Statutes, regulations, and court decisions which affect members of a military community, including personal finances, consumer protection, family law, taxation, survivor benefits, civil rights, and state small claims procedures. Claims: Statutes, regulations and court decisions relating to the Military Personnel and Civilian Employees Claims Act, Military Claims Act, Army National Guard Claims Act, Federal Tort Claims Act and claims in favor of the Government.

FEDERAL LABOR RELATIONS COURSE (5F–F22)

Length: 4-½ days.

Purpose: To provide a basic knowledge of personnel law pertaining to civilian employees, and labor-management relations.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. Persons who have completed this course within the past two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: Law of Federal Employment: Hiring, promotion and discharge of employees under the FPM and CPR; role of the Civil Service Commission; procedures for grievances, appeals and adverse actions; personal rights of employees; and equal employment opportunity complaints. Federal Labor-Management Relations: Rights and duties of management and labor under Executive Order 11491, as amended, and DOD Directive 1426.1; representation activities; negotiation of labor contracts; unfair labor practice complaints; ad-

ministration of labor contracts and procedures for arbitration of grievances. Government Contractors: An overview of the responsibility of military officials when government contractors experience labor disputes.

LEGAL ASSISTANCE COURSE (5F-F23)

Length: 3-½ days.

Purpose: A survey of current problems in Army legal assistance providing knowledge of important legal trends and recent developments involved in areas of legal assistance rendered to service members.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Graduate Course. Security clearance required: None.

Substantive Content: New developments in the areas of legal assistance rendered military personnel including consumer protection, family law, state and federal taxation, civil rights, survivor benefits, bankruptcy, and small claims. The instruction is presented with the assumption that students already have a fundamental knowledge of legal assistance.

MILITARY ADMINISTRATIVE LAW DEVELOPMENTS COURSE (5F-F25)

Length: 4 days.

Purpose: To provide knowledge of important legal trends and recent developments in military administrative law, judicial review of military actions, and decisions relating to the operation of military installations.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Security clearance required: None.

Substantive Content: New developments in the areas of military administrative law including military personnel, civilian personnel, military assistance to civil authority, legal basis of command (military installation law) and nonappropriated funds, with particular emphasis on developing case law in the areas of administrative due process, vagueness, and constitutionality of regulations, including first and fourteenth amendment considerations. Developments in the area of judicial review of military activities, including procedures for control and management of litigation involving the Army as required by AR 27-40. The instruction is presented with the assumption that students already have a fundamental knowledge of the areas covered.

CLAIMS COURSE (5F-F26)

Length: 3 days

Purpose: To provide advanced continuing legal education in the Army Claims System, including recent judicial decisions and statutory and regulatory changes affecting claims.

Prerequisites: U.S. Army active duty or reserve component attorney or appropriate civilian attorney employed by the Department of the Army. Reserve officers must have completed the Judge Advocate Officer Graduate Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Persons who have completed this course within the past two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: Claims against the government. Analysis of claims relating to Military Personnel and Civilian Employees Claims Act, Federal Tort Claims Act, National Guard Claims Act, Foreign Claims Act, and Nonscope Claims Act. Recent developments in foregoing areas will be emphasized. Claims in favor of the Government. Analysis of Federal Claims Collection Act and Federal Medical Care Recovery Act with emphasis on recent developments.

ENVIRONMENTAL LAW COURSE (5F-F27)

Length: 3-½ days.

Purpose: To provide instruction in the basic principles of environmental law as they affect federal installations and activities.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

Substantive Content: Basic principles of environmental law as it applies to military installations, including the National Environmental Policy Act and its requirement for preparation of environmental impact statements, the Clean Air Act, and the Federal Water Pollution Control Act. The course also includes a brief discussion of other environmental laws and the roles of the Environmental Protection Agency and the Army Corps of Engineers in environmental regulation.

GOVERNMENT INFORMATION PRACTICES COURSE (5F-F28)

Length: 2-½ days.

Purpose: To provide basic knowledge of the requirements of the Freedom of Information Act and the Privacy Act. This course is designed primarily for practicing military lawyers in the field.

Prerequisites: Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. Government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Persons who have completed this course within the two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: The disclosure requirements of the Freedom of Information Act; the exemptions from disclosure and their interpretation by the federal courts; the restrictions on the collection, maintenance, and dissemination of personal information imposed by the Privacy Act; the relationship between the two Acts and their implementation by the Army.

LITIGATION COURSE (5F-F29)

Length: 3-½ days.

Purpose: To provide basic knowledge and skill in handling litigation against the United States and officials of the Department of Defense in both their official and private capacities.

Prerequisites: Active duty military lawyer or civilian attorney employed by the Department of Defense. Enrollment is not recommended unless the individual is responsible for monitoring, assisting or handling civil litigation at his or her installation. Anyone who has completed the Army Judge Advocate Officer Graduate Course (resident) within two years of the date of this course is ineligible to attend. Persons who have completed this course within the past two-year period immediately preceding the date of this course are not eligible to attend. Security clearance required: None.

Substantive Content: The following areas will be covered: Reviewability and justiciability, federal jurisidiction and remedies, scope of review of military activities, exhaustion of military remedies, Federal Rules of Civil Procedure, civil rights litigation, FTCA litigation, and official immunity. There will be a practical exercise in the preparation of litigation reports and pleadings.

MILITARY JUSTICE I COURSE (5F-F30)

Length: 2 weeks.

Purpose: To provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law. This course is specifically designed to fulfill approximately one-half of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-half of the materials presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase II.

Prerequisites: Active duty or reserve component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Evidentiary aspects of military criminal law practice, including; scientific evidence, confrontation, compulsory process, right to counsel, federal and common law rules of evidence, search and seizure, self-incrimination, identification, substantive law of offenses and defenses, and topical aspects of current military law.

MILITARY JUSTICE II COURSE (5F-F31)

Length: 2 weeks.

Purpose: To provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law. This course is specifically designed to fulfill one-half of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase II.

Prerequisities: Active duty or reserve component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: Procedural aspects of military criminal law, including; administration of military criminal law, jurisdiction, pleadings, motions, pleas, preliminary investigations and reports, court-martial personnel, trial procedures, post trial review and procedures, extraordinary writs, appellate review, professional responsibility, and topical aspects of current military law.

CRIMINAL TRIAL ADVOCACY COURSE (5F-F32)

Length: 4-½ days.

Purpose: To improve and polish the experienced trial attorney's advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with at least six months' experience as a trial attorney.

Substantive Content: Intensive instruction and exercises encompass problems confronting trial and defense counsel from pretrial investigation through appellate review. Issues in evidence, professional responsibility, procedure, trial advocacy, and topical aspects of current military law are considered.

MILITARY JUDGE COURSE (5F-F33)

Length: 3 weeks.

Purpose: To provide military attorneys advanced schooling to qualify them to perform duties as full-time military judges at courts-martial.

Prerequisites: Active duty or reserve component military attorneys. Security clearance required: None. Army officers are selected for attendance by The Judge Advocate General.

Substantive Content: Trial procedure, substantive military criminal law, defenses, instruc-

tions, evidence, current military legal problems, and professional responsibility.

DEFENSE TRIAL ADVOCACY COURSE (5F–F34)

Length: 4-½ days.

Purpose: To improve and polish the experienced trial attorney's defense advocacy skills.

Prerequisites: Active duty military attorney certified as counsel under Article 27b(2), UCMJ, with 6–12 months' experience as a trial attorney and with present or prospective immediate assignment as a defense counsel at the trial level. Security clearance required: None.

Substantive Content: Intensive instruction, keyed to defense counsel's needs, encompass problems from pretrial investigation through appellate review. Issues in evidence, professional responsibility, procedure, trial advocacy and topical aspects are considered.

CRIMINAL LAW NEW DEVELOPMENTS (5F–F35)

Length: 3 days.

Purpose: To provide counsel and criminal law administrators with information regarding recent developments and trends in military criminal law. This course is revised annually.

Prerequisites: This course is limited to active duty judge advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Students must not have attended TJAGSA resident criminal law CLE, Basic or Graduate courses, within the 12-month period immediately preceding the date of the course.

Substantive Content: Government/defense counsel post trial duties; speedy trial; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; search and seizure; recent trends in the United States Court of Military Appeals; jurisdiction; witness production; mental responsibility; military corrections; pleadings; developments in substantive law; topical aspects of current military law.

INTERNATIONAL LAW I COURSE (5F–F40)

Length: 2 weeks.

Purpose: To provide knowledge of the sources, interpretation and application of international law. This course fulfills approximately one-third of the requirements of phase VI of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorney, 02–04, or appropriate civilian attorney employed by the U.S. Government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: The International Legal System: nature, sources and evidences of international law; state rights and responsibilities; recognition; nationality; international agreements; the United Nations and the International Court of Justice; international rules of jurisdiction; status of forces agreements, policies, practices and current developments; foreign claims operations overseas procurement operations; and private aspects of international law.

INTERNATIONAL LAW II COURSE (5F–F41)

Length: 2 weeks.

Purpose: To provide familiarization with the law of war, including customary and conventional (Hague and Geneva Conventions) laws, and the national and international legal rules affecting military operations during times of peace, of armed conflict and of occupation. This course fulfills approximately one-third of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Graduate Course. It also covers approximately one-third of the materials presented in the USAR School

Judge Advocate Officer Graduate Course ADT Phase VI.

Prerequisites: Active duty or reserve component military attorney, 02–04, or appropriate civilian attorney employed by the U.S. Government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Graduate Course by correspondence. Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of U.S. Military Forces in military operations in all levels of hostilities; the Hague and Geneva Conventions and the General Protocols, and their application in military operations and missions, to include problems on handling of war crimes, control of civilians, Article 5 tribunals for the classification of prisoners of war; occupation and civil affairs matters; law of war training and the Code of Conduct.

LAW OF WAR WORKSHOP (5F–F42)

Length: 4-½ days.

Purpose: To provide both judge advocate and non-judge advocate officers with basic knowledge of the law of war and of the major changes now impending in this field and of the practical aspects of law of war instruction.

Prerequisites: Active duty or reserve component military attorney or appropriate civilian attorney employed by the Department of Defense, as well as non-attorney officers with command experience who are to be involved in any aspect or level of the law of war training process. Preferably, attorneys and non-attorney officers should attend the workshop as a teaching team. However, organizations wishing to qualify either attorneys or command experienced officers in the law of war training process may send one or a number of unpaired designees. Security clearance required: None.

Substantive Content: International customs and treaty rules affecting the conduct of forces in military operations in all levels of hostilities, the Hague and Geneva Conventions and their application in military operations, to include problems on reporting and investigating war crimes; treatment and control of civilians; treatment and classification of prisoners of war; the substantial change to the law of war impending as a result of the recent adoption in Geneva of the Protocols additional to the 1949 Geneva Conventions, including extensive new obligations of commanders and military attorneys. Practical emphasis is given to preparation of lesson plans, methods of instruction, and use of law of war training materials. Participation in team teaching exercises is required.

STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F–F52)

Length: 4-½ days.

Purpose: To inform newly assigned staff judge advocates of current trends and developments in all areas of military law.

Prerequisites: Active duty field grade Army judge advocate whose actual or anticipated assignment is as a staff judge advocate or deputy staff judge advocate of a command with general court-martial jurisdiction. Security clearance required: None.

Selection for attendance is by The Judge Advocate General.

Substantive Content: Major problem areas and new developments in military justice, administrative and civil law, procurement, and international law.

LAW OFFICE MANAGEMENT (7A–713A)

Length: 4-½ days.

Purpose: To provide a working knowledge of the administrative operations of a staff judge advocate office and to provide basic concepts of effective law office management to military attorneys, warrant officers, and senior enlisted personnel.

Prerequisites: Active duty or reserve component JAGC officer, warrant officer or senior en-

listed personnel in grade E-8/E-9 in any branch of the armed services. Persons who have completed this course or the Graduate Course within the *three-year period* preceding the date of this course are not eligible to attend. Officers who have been selected for Graduate Course attendance also are ineligible to attend. Security clearance required: None.

Substantive Content: Management theory including formal and informal organizations, motivation and communication. Law office management techniques, including effective management of military and civilian personnel and equipment, and control of budget and office actions.

MILITARY LAWYER'S ASSISTANT COURSE (512–71D/20/50)

Length: 7-½ days.

Purpose: The course provides essential training in the law for legal clerks and civilian employees who work as professional assistants to Army judge advocate attorneys. The course is specifically designed to meet the needs of the Army legal clerk, MOS 71D, for skill level three training in paralegal duties.

Prerequisites: The course is open only to enlisted service members and civilian employees who are serving as paraprofessionals in a military legal office, or whose immediate future assignment entails providing professional assistance to an attorney. Students must have a served minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course.

Substantive Content: The course focuses on Army legal practice, with emphasis on the client service aspects of legal assistance and criminal law. The course builds on the prerequisite foundation of field experience and correspondence course study. Coverage includes administrative procedures; legal assistance areas of family law, consumer protection, landlord-tenant and taxation; military criminal law areas of crimes and defenses, role of court personnel, jurisdiction, pretrial procedures and evidence; legal research; written communication; interviewing techniques; and professional responsibility.

4. Civilian Sponsored CLE Courses.

JULY

5–7: LEI, Institute for Legal Counsels, TJAGSA, Charlottesville, VA. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone (202) 254-3483.

9–14: Univ. of Colorado School of Law—ALI-ABA, Energy and the Law: Problems and Challenges of the Late 70's, Boulder CO. Contact: Donald M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

9–14: Univ. of Colorado School of Law—ALI-ABA, Environmental Litigation, Boulder, CO. Contact: Donald M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

9–28: NCDA, Career Prosecutor Course, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

10–14: Federal Publications, Government Construction Contracting, Las Vegas, NV. Contact: Miss J.K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: $575.

11–13: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

12–14: PLI, Workshop for the Lawyer's Assistant: Paraprofessional and Secretary [Estate Planning and Administration or Litigation], Biltmore Hotel, New York, NY. Contact: Nancy Hinman, Practising Law Institute,810 7th Ave., New York, NY 10010. Phone: (212) 765-5700. Cost: $125.

17:21: Univ. of Richmond School of Law, Summer Program in England for Practicing Lawyers [Legal History; Law of the European Economic Community; International Tax; Courtroom Use of Forensic Evidence; Administrative Law; Practice and Procedure], Queen's College, Cambridge Univ., England. Contact: Director, Summer Program for Practicing Lawyers at Cambridge, Univ. of Richmond School of Law, Univ. of Richmond, VA 23173. Cost: $375.

17-21: Univ. of Baltimore Law School—Federal Publications, Civilian Agency Procurement, Washington, D.C. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone (202) 337-7000. Cost: $575.

17-29: Harvard Law School, 10th Program of Instruction for Lawyers, Cambridge, MA. [The Program consists of 31 courses and four afternoon colloquia.] Contact: Program of Instruction for Lawyers, Harvard Law School, Cambridge, MA 02138.

18-20: LEI, Legal Research for Paralegals Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

24-28: Univ. of San Francisco School of Law—Federal Publications, Concentrated Course in Government Contracts, Tropicana Hotel, Las Vegas, NV. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: $575.

26-27: LEI, Preparation of Litigation Reports Seminar, Washington, DC. Contact: Legal Education Institute: TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

31-2 Aug: Federal Publications, Construction Contract Modifications, Washington, DC, Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: $475.

AUGUST

3-9: ABA, Centennial Meeting, New York, NY. Contact: Meetings Department, American Bar Association, 1155 E. 60th St., Chicago, IL 60637.

7: FBA, FBA Breakfast at the ABA Annual Meeting, New York Hilton, New York, NY.

9-11: PLI, Workshop for the Lawyer's Assistant: Paraprofessional and secretary [Estate Planning and Administration or Litigation], Hyatt Regency Hotel, San Francisco, CA. Contact: Nancy Hinman, Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: $125.

12-15: Southern California Neuropsychiatric Institute, Symposium on Modern Neuropsychiatric Diagnosis and the Law, Mauna Kea Beach Hotel, Kamuela, HI, Contact: Gail Waldron, M.D., Program Director, Southern California Neuropsychiatric Institute, 6794 La Jolla Blvd., La Jolla, CA 92037.

12-19: CPI, Trial Advocacy Seminar, Ramada O'Hara Inn, Chicago, IL. Contact: Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone (312) 725-0166. Cost: $700.

14-18: George Washington Univ.—Federal Publications, Government Contract Claims, Berkeley, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: $575.

20-23: Colby College, New England Seminar in the Forensic Sciences. Contact: Robert H. Kany, Special Programs, Colby College, Waterville, ME 04901.

23-24: LEI, Seminar for Attorneys on FOI/Privacy Acts, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

23-25: PLI, Fundamental Concepts of Estate Administration, Little America Westgate Hotel, San Diego, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: $250. Course handbook without course: $20.

28-30: Federal Publications, Construction Contract Modifications, Seattle, WA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St., NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: $475.

JAGC Personnel Section

PP&TO, OTJAG

1. Warrant Officer Procurement. As announced by DA Message DAPC-OPP-S 232100Z Feb 78, subject: Interim Change 2 to DA Circular 601-73, and the published Change 2, dated 15 May 1978, MOS 713A (Legal Administrative Technician) is open for procurement from 1 June to 31 August 1978. Subsequently, a board will be convened in the Office of The Judge Advocate General to review the applications and select two applicants for tentative appointment during Fiscal Year 1979; actual appointments will be dependent upon maintenance of current warrant officer strength authorizations and receipt of sufficient appointment quotas to sustain the authorized strength level.

As was announced in the May 1977 issue of *The Army Lawyer*, applications will be accepted from both administrative and court reporter personnel; selection of the two best qual-

ified will be based on overall qualifications, regardless of specialty. However, court reporter applicants who desire to remain in that specialty should indicate, in Item 35 (Remarks) of DA Form 61 (Application for Appointment), that application is made for appointment in the court reporter subspecialty (ASI 7B).

Prospective applicants must meet the eligibility and processing criteria set forth in Chapters 1 and 2, AR 135–100, and the mandatory prerequisites detailed in Appendix B, DA Circular 601–73. In addition, since competition for the two vacancies is expected to be extremely keen, personnel who do not also meet the preferred qualifications listed in Appendix C, DA Circular 601–73, realistically have only a very remote possibility of selection.

All applications must be completed, submitted, and processed in strict compliance with the provisions of AR 135–100 and DA Circular 601–73. Advance or information copies are not required, and will not be accepted, by OTJAG.

A new DA Circular in the 601 series governing warrant officer procurement for FY 1979 will be issued later this summer. It will announce procurement for MOS 713A from 1 May to 30 June 1979. This "open" period, which is designed to assure completion of selection board action before the start of the fiscal year in which appointments are to be made, will be used in future years whenever projected vacancies allow procurement. However, in the transition, an overlapping of "open" periods during the month of June will allow individuals who apply before 30 June 1978, but are not selected, to reapply next year if they remain eligible. Current projections indicate that there will be several more selections possible in 1979 than in 1978.

2. RA Promotions.

COLONEL

Thornton, James F.	23 May 78

MAJOR

Kullman, Thomas M.	11 May 78

3. AUS Promotions.

COLONEL

Adamkewicz, Edward	4 Apr 78
Green, James L.	5 Apr 78
Radosh, Burnett H.	4 Apr 78

MAJOR

Holloman, John T.	2 Apr 78
Kullman, Thomas M.	11 May 78
Phillips, Edelbert	14 Apr 78
Rothlisberger, Daniel	12 Apr 78

CW4

Reca, James J.	3 Apr 78

4. Legal clerks and court reporters selected for promotion to the grade of E-7, Sergeant First Class.

MOS 71D

Ball, William W.	Megaree, Glen W.
Bartch, Michael	Miller, Lewis E.
Boulanger, Donald C.	Nowland, Thomas S.
Burke, Billy R.	Nydam, Paul M.
Festervan, Ethelene	Ochoa, James M.
Gonzalez, Hector	Pierren, Stephen C.
Harville, Ronald S.	Poulton, Charles R.
Hillebrand, Joseph	Reese, Thomas E.
Holmes, Louis R.	Ridgeway, Rejeanne
Kirkpatrick, Amos L.	Sebek, Michael P.
Lauris, Dainis	Smith, Peter J., Jr.
Locke, Glenn W.	Thornton, Robert E.
Macks, Andrew J.	Zakaluzny, Adrian
Martin, John B.	Zeigler, Wesley R.

MOS 71E

Barber, Aziz G.
Matthews, Kenneth W.
Turton, Linda M.

5. Assignments.

COLONELS

NAME	*FROM*	*TO*
Miller, Harold Lee	HQ V Corps, USAREUR	USA ELM OJCS, Pentagon

NAME	*FROM*	*TO*
Thornton, James Francis, Jr.	USA ELM HQ USSOUTH, APO NY	USA ARM CTR, Ft. Knox, KY
	LIEUTENANT COLONELS	
Aldinger, Robert Raymond	USALSA, w/duty Baumholder Germany	USALSA, w/duty Bad Kreuznach, Germany
Jones, Robert Walter	HQ 1 USA, Ft. Meade, MD	HQ 5 USA, Ft. Sam Houston, TX
McKay, William Patterson	USAG, Presidio of San Francisco, CA	USA SPT CMD HI, Ft. Shafter, HI
Murray, Charles Robert	USACGSC STU DET, Ft. Leavenworth, KS	HQ USAREC, Ft. Sheridan, IL
Thornock, John Richmond	EN CTR VDE 2bn Ft. Belvoir, VA	USALSA (C.M.R.)
Watkins, Charlie Clarke	HQ S&F USMA, West Point, NY	USALSA (C.M.R.)
Witt, Jerry Vincent	USA ELE OJCS OF, Pentagon	IND COL OF ARMD, Ft. McNair, DC
	MAJORS	
Anderson, Garry Layton	USA ELE JUSMAGTHAI, Bangkok, Thailand	ACS USA ADC, Ft. Bliss, TX
Baker, James Robert	HQ V Corps, USAREUR	27th Advanced Course, TJAGSA
Berry, Robert Haitt, Jr.	USAARMC CO A, Ft. Knox, KY	USALSA, w/duty Trial Defense Service, Ft. Knox, KY
Clark, Michael D.	USA STU DET, Albany, NY	87th Basic Class, TJAGSA
Coppenrath, Gerald Richard	26th Advanced Course, TJAGSA	HQ TRADOC, Ft. Monroe, VA
Eisenberg, Stephen Abraham	26th Advanced Course, TJAGSA	S&F, TJAGSA
Graves, Joseph Leo, Jr.	OTJAG, Wash DC	27th Advanced Course, TJAGSA
Kaplan, Harvey William	HDQ CO, Ft. Hamilton, NY	USAO, San Francisco, CA
Leonardi, Kenneth John	USAO Ft. Carson, CO	27th Advanced Course, TJAGSA
Mackey, Richard	TJAGSA	OTJAG, Pentagon
Rice, Frances Presley	USA StuDet, Sacramento, CA	87th Basic Course, TJAGSA
Taylor, Thomas	HQ, Faculty USMA	27th Advanced Course, TJAGSA
Taylor, Warren H.	USAREUR	USA RETNG BDE, Ft. Riley, KS
Wallace, John Keay	Stu Det, TJAGSA	S&F, TJAGSA
	CAPTAINS	
Adams, William	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Aguirre, Jose	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Allemeier, Daniel	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA

NAME	*FROM*	*TO*
Altenburg, John	Ft. Bragg, NC	27th Advanced Course, TJAGSA
Alvarey, Joel P.	Ft. Carson, CO	27th Advanced Course, TJAGSA
Argue, Warren J.	TJAGSA	USALSA, Bailey Crossroads, VA
Arnold, Peter G.	USAREUR	USAMRRC, Presidio of San Francisco, CA
Barry, Bruce C.	TJAGSA	1st Inf Div, Ft. Riley, KA
Beardall, Charles	USAREUR	27th Advanced Course, TJAGSA
Behuniak, Thomas	S&F, TJAGSA	USA ELE JUSMAGT, Bangkok, Thailand
Blakely, Richard	TJAGSA	ACS USA FA CEN, Ft. Sill, OK
Boonstoppel, R.	USA Support Cmd, HI	27th Advanced Course, TJAGSA
Boucher, David	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Bomen, Gary Way	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Braga, James A.	Walter Reed AMC, Wash, DC	RRD, MILPERCEN, APO, SF
Branstetter, R.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Brown, Larry T.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Brown, Patrick	Ft. Polk, LA	USALSA, with station, Schweinfurt, Germany
Bryant, Fred E.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Buckey, Kerry A.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Canner, Demmon	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Carlson, Louis	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Caron, William	TJAGSA	USA Claims Svc, Germany
Casey, Peter E.	TJAGSA	1st Inf Div Fwd, Germany
Casida, Gary W.	Ft. Carson, CO	27th Advanced Course, TJAGSA
Cathey, Theodore	S&F, TJAGSA	EUCOM SPT ACT, Iran
Caulking, John	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Cavalier, John	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Ce Fola, Richard	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA

NAME	*FROM*	*TO*
Chiminello, Philip	Ft. Sam Houston, TX	5th Corps, APO, NY
Cooke, John S.	TJAGSA	USALSA, with station, Nurnberg, Germany
Cunningham, William	Ft. Stewart, GA	27th Advanced Course, TJAGSA
Curtis, Thomas	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Davidson, Van M.	TJAGSA	USALSA, Bailey Crossroads, VA
Deckert, Raymond	Alaska	27th Advanced Course, TJAGSA
DeCort, Donald	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Denny, Michael	USAREUR	27th Advanced Course, TJAGSA
Dodson, Roy Leo	TJAGSA	OTJAG, Washington, DC
Dooley, Stephen	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Edlefsen, Gregory	TJAGSA	101st ABN Div, Ft. Campbell, KY
Faggioli, Vince	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Fand, Robert M.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Flachs, Patrick	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Folk, Thomas R.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
France, Edward	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Frick, Ralph J.	Korea	27th Advanced Course, TJAGSA
Fridolf, Ronald	TJAGSA	USA ELM OSD, Pentagon
Galehouse, Lawrence	TJAGSA	3d Inf. Div., Germany
Gasperini, Richard	USAREUR	27th Advanced Course, TJAGSA
Gaydos, Lawrence	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Gonzales, Robert	Ft. Bragg, NC	27th Advanced Course, TJAGSA
Goo Lester M.	TJAGSA	3d Inf. Div., Germany
Hahn, Alan K.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Hansen, Donald	USAREUR	27th Advanced Course, TJAGSA
Harper, Stephen	TJAGSA	USALSA, with Station, Frankfurt, Germany
Helmcamp, Dewey	USALSA, with station, Nurnburg, Germany	27th Advanced Course, TJAGSA
Holoman, John	TJAGSA	OTJAG, Pentagon
Hood, Gene G.	USAREUR	27th Advanced Course, TJAGSA
Hubbard, George	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Huffman, Laruen	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Jackson, Robert	TJAGSA	XVIII ABN Corps, Ft. Bragg, NC

NAME	*FROM*	*TO*
James, Anthony	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Jepperson, Jon	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Johnson, William	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Johnson, Wayne	Ft. Campbell, KY	27th Advanced Course, TJAGSA
Jones, John T.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Jones, William	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Judd, Kim Kahle	TJAGSA	USA Mil. Pol. Sch., Ft. McClellan, AL
Kesler, Dickson	TJAGSA	USAG, Ft. Monroe, VA
Key, William S.	USAREUR	27th Advanced Course, TJAGSA
King, John E.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Kirk, William C.	TJAGSA	2d Inf. Div., Korea
Knight, Scott P.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Krempasky, Richard	Ft. McPherson, GA	27th Advanced Course, TJAGSA
Lane, Thomas C.	TJAGSA	USA Sch./Tng. Ctr., Ft. McClellan, AL
Lantz, William	USAREC-MEPCOM, Presidio of San Francisco, CA	27th Advanced Course, TJAGSA
Laube, Garey L.	Ft. Hood, TX	USALSA, with station, Ft. Stewart, GA
Lazarek, James	Korea	27th Advanced Course, TJAGSA
Leeling, Gerald	TJAGSA	OTJAG, Pentagon
Lower, Philip E.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Luedtke, Paul J.	TJAGSA	24th Inf. Div., Ft. Stewart, GA
Lundberg, Steve	USAREUR	27th Advanced Course, TJAGSA
McCarthy, Daniel	USALSA, with station, Ft. Knox, KY	27th Advanced Course, TJAGSA
McLaurin, John	TJAGSA	HQ USAREUR, with duty, U.S. Embassey, Aris, France
McMenis, James E.	S&F, TJAGSA	27th Advanced Course, TJAGSA
McQuarrie, Claude	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Meixell, John T.	USAREUR	27th Advanced Course, TJAGSA
Merck, Larry S.	TJAGSA	USA ARM CTR, Ft. Knox, KY
Morgan, Roderick	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Morgan, Timothy	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Moye, Danny Ray	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Northrop, John	TJAGSA	USALSA, Bailey Crossroads, VA
Norton, James M.	TJAGSA	USALSA, with station, Ft. Leonard Wood, MO.

NAME	*FROM*	*TO*
Nypaver, Stephen	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Pangburn, Kenneth	Ft. Gordon, GA	27th Advanced Course, TJAGSA
Pavlick, John J.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Pine, Louis F.	TJAGSA	RRD, MILPERCEN, Korea
Raney, Terry W.	TJAGSA	USA Avn. Ctr., Ft. Rucker, AL
Rehyansky, Joseph	TJAGSA	S&F, TJAGSA
Retson, Nicholas	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Reyna, Louie	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Riggs, Ronald M.	Ft. McNair, DC	27th Advanced Course, TJAGSA
Roberts, Raymond	TJAGSA	USA ELEC Cmd., Ft. Monmouth, NJ
Rosenblatt, James	TJAGSA	S&F, TJAGSA
Russell, James	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Saynisch, Stephen	TJAGSA	HQ USAREUR
Schempf, Bryan	TJAGSA	S&F, TJAGSA
Schinasi, Lee D.	USALSA, Bailey Crossroads, VA	27th Advanced Course, TJAGSA
Schwabe, Charles	OTJAG	27th Advanced Course, TJAGSA
Schwender, Craig	TJAGSA	USALSA, with station, Ft. Knox, KY
Segaar, Ruurd C.	TJAGSA	USA Msl. Cmd., Redstone Arsenal, AL
Selby, Edwin D.	Ft. Ben Harrison, ID	87th Basic Course, TJAGSA
Sisson, George	TJAGSA	III Corps, Ft. Hood, TX
Smith, Brian K.	Ft. Bragg, NC	27th Advanced Course, TJAGSA
Smith, Douglas	TJAGSA	USA SM ACAD, Ft. Bliss, TX
Smith, Gregory	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Smith, James D.	TJAGSA	OTJAG, Pentagon
Smith, Michael	USA Support Cmd., HI	27th Advanced Course, TJAGSA
Stephens, Frederick	TJAGSA	USALSA, Bailey Crossroads, VA
Stokesberry, John	Korea	27th Advanced Course, TJAGSA
Thomason, Terry	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Thwing, James B.	USAREUR	27th Advanced Course, TJAGSA
Toomey, Allan A.	TJAGSA	3d Arm. Div., Germany
Trivette, William	Ft. Ben Harrison, IN	4th Inf. Div., Ft. Carson, CO
Tromey, Thomas	Ft. Knox, KY	27th Advanced Course, TJAGSA
Wagner, David W.	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Ward, Lawrence	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Warren, Michael	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Williams, Larry	TJAGSA	7th Inf. Div. Ft. Ord, CA

NAME	FROM	TO
Williams, Robert	TJAGSA	USALSA, Bailey Crossroads, VA
Woodruff, William	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Zucker, David C.	TJAGSA	HQ USAREUR
Zucker, Karin W.	OTJAG	USA MEDCOM EUR, Germany
	LIEUTENANTS	
Feeney, Thomas	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
Nelms, Russell	Ft. Ben Harrison, IN	87th Basic Course, TJAGSA
	WARRANT OFFICERS (CW3)	
Gaffney, David	Alaska	ACS USA FA Cen, Ft. Sill, OK
Hall, Jackie E.	Ft. Belvoir, VA	USAIA, Ft. Ben Harrison, IN

Current Materials of Interest

Change 2, MCM, 1969 (Rev.).

(This information was supplied by the Criminal Law Division, OTJAG.)

The Joint Service Committee on Military Justice presently is reviewing page-proofs for Change 2, MCM, 1969 (Rev.). This change consists of an amendment made by Executive Order 12018, which became effective on 3 November 1977, making in a POW situation the senior ranking person (except for a medical officer or chaplain) the lawful superior of prisoners of a lower rank, regardless of armed force.

Distribution of Change 2 will be accomplished through pinpoint distribution. At this time, based on a review of command accounts, approximately 18,000 subscribers will receive the change. SJAs should remind command subscribers of the requirement to review their subscription forms periodically to ensure they accurately reflect organizational requirements. See generally Chapter 3, AR 310-2, 12 July 1976.

Articles.

Donald N. Zillman, *Free Speech and Military Command,* 1977 UTAH L. REV. 423 (1977).

Major Kenneth D. Gray, *Negotiated Pleas in the Military,* 37 FED. B. J. 49 (1978).

Korb, *Service Unification: Arena of Fears, Hopes, and Ironies,* U.S. NAVAL INST. PROC., May 1978, at 170.

Comment.

Comment, Culver v. Secretary of the Air Force: *Restriction of Servicemen's Individual Freedoms Abroad for Foreign Policy Reasons,* 19 WM. & MARY L. REV. 119 (1977).

Book Review.

Arnold Anderson Vickery, *Book Review,* 15 HOUSTON L. REV. 469 (1978). [Review of LUTHER C. WEST, THEY CALL IT JUSTICE: COMMAND INFLUENCE AND THE COURT-MARTIAL SYSTEM (1977).]

Alumni Newsletter.

THE JUDGE ADVOCATE GENERAL'S SCHOOL ALUMNI NEWSLETTER, Volume 9, was published with an April 1978 date.

Current Military Justice Library.

4 M.J. No. 13.
5 M.J. No. 1.

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Brigadier General, United States Army
The Adjutant General

* U.S. GOVERNMENT PRINTING OFFICE: 1978